
(1999) 09 GAU CK 0036

In the Gauhati High Court

Case No : Civil Rule No's. 867 and 927 of 1997

N. Rupoban Singh and Another

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-09-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1), 15(1), 15(2), 18(5), 29A

Citation : (2001) 3 GLT 292

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : Th. Modhu Singh, for the Appellant; Ch. Bidiyamani Devi, for the Respondent

Judgement

P.C. Phukan, J.—Civil Rule No. 867 of 1997 and Civil Rule No. 727 of 1997 arise out of similar facts and involve common questions of law and hence are being disposed of by this common judgment and order.

2. I have heard Mr. Th. Modhu Singh, learned Counsel appearing for the Petitioners in both the Civil Rules as well as Mrs. Ch. bidiyamani Devi, learned Addl. Govt. Advocate for the Respondents in both the Civil Rules. I have also considered the records.

3. The Petitioners' case in brief is that they were initially appointed as Headmaster/Asstt. Headmaster by the erstwhile Managing Committee/Governing Body of their respective schools before their schools were taken over by the Government of Manipur subsequently, the State Govt. took over 107 schools and approved the Petitioners' services w.e.f. the date they drew Govt. Scale of pay under 90% deficit grants-in-aid scheme for the purposes of pay, promotion, pension, seniority and gratuity vide the State Govt. order dated 5.10.79 (Annexure-A/3). The State Government also declared all the Principals and the Headmasters of the newly converted 107 High/Higher Secondary Schools as the Head of Office and Drawing and Disbursing Officer of their respective Schools

with immediate effect via order dated 12.9.78 (Annexure-A/5). The Petitioners except No. 4,10 and 11 started to draw their salaries as Headmaster/Asstt. Headmaster with effect from 5.8.78, that is, the date of their absorption into the Govt. service. Petitioner Nos. 4,10 and 11 started drawing such salaries with effect from 1.3.73, that is, the date from which they started to draw the govt. scale of pay under 90% deficit system of grants-in-aid. The Petitioners started to draw govt. scale of pay as aforesaid only after their service records had been thoroughly checked and verified by the concerned Inspectors of School.

4. On 30.3.93, the State Government by orders purported to have been made under Sub-rule (1) of Rule 10 of the Central Civil Services (classification, Control and Appeal) Rules 1965, for short CCS (CCA) Rules, bearing the same number and date placed Petitioner Nos. 1 & 8 under suspension in contemplation of disciplinary proceedings. On 20.4.93, the State Government by Anr. set of similar orders bearing the same number and date placed Petitioner Nos. 2 to 19 under suspension in contemplation of disciplinary proceedings. The Petitioners filed separate writ petitions namely, Civil Rule No. 503, 487, 506, 489, 500, 496, 502, 499, 491, 493, 488, 505,486 (a), 494, 490, 498, 492 and 495 of 1993. This Court passed common interim order dated 14.5.93 in the said Civil Rules that the said orders of the State Govt. dated 30.3.93 and 20.4.93 shall not be given effect to. During the pendency of those Civil Rules, the State Govt. by separate orders bearing the same number and dated 14.2.94 revoked the said suspension orders and reinstated the Petitioners without prejudice to the Departmental Inquiry against them. The said Civil Rules filed by the Petitioners were disposed of by a common judgment and order dated 1.3.94 with the direction that the Petitioners shall be paid their pay and allowances at the rate they were drawing before their suspension.

5. The State Government issued memorandum bearing the same number and dated 19.5.93 for holding departmental inquiry on the charge that the Petitioners had withdrawn without entitlement arrear pay and allowances for the period before taking over of the schools by the Government. The Petitioners filed their respective written statements pleading innocence. The Inspector of Schools reported that the charges levelled against the Petitioners were not correct. The Inquiring Authority Commissioner (DE) submitted his finding/report that the charges had not been proved. The Disciplinary Authority State Government sought advice of the Vigilance Commissioner, Manipur who advised to accept the finding/report of the Inquiring Authority exonerating the Petitioners. The State Govt. accepted the same in respect of the Petitioners Nos. 1 to 7 dropped the charges levelled against them and directed that the period of their suspension shall be treated as on duty for all purposes vide separate orders passed on 8.10.96, 10.10.96 and 11.10.96 (Annexure-A/5 to A/21). These orders, except the dates and the names, are similarly worded and hence it would be sufficient to reproduce one of them; and the one in respect of the Petitioner No. 1, Shri M. Rupoban Singh, (Annexure-A/15). is reproduced below:

ORDERS BY THE GOVERNOR OF MANIPUR

Imphal, the 8th October, 1996.

No. 14(3)/2/93-SE(S)Pt.(7) : Whereas, an order placing Shri M. Supoban Singh, Asstt. headmaster, Nambol Collegiate High School, Manipur under suspension was made vide Govt. order No. 14(2)/2/93-SE(S): dated 1.10.1993 and then revokes the order of suspension without prejudice to the Departmental Enquiry against him vide order No. 14(3)/2/93-SE(S) : dt. 14.2.1994.

Whereas, the Inquiry Authority appointed to enquire into the Memorandum of charges against the delinquent Officer reported that the charges levelled against Shri Singh was not proved during the enquiry. Whereas, the Vigilance Commission has advised for acceptance of Inquiry Authorities' report vide their letter No. 1/99/95-ED: dated 4.1.1996 and the charges levelled against Shri M. Rupoban Singh, Asstt. Headmaster, Nambol Collegiate High School, Manipur is hereby closed/dropped.

Now, therefore, the Governor of Manipur in exercise of the power conferred by Clause (C) of Sub-rule (5) of Rule 18 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect. The period of suspension shall be treated as on duty for all purposes including pay and allowances, pension, etc. as admissible under Rules.

By order & in the name of the Governor:

Sd/-(S. Kunjabihari Singh) Secretary (Education) to the Govt. of Manipur

6. The orders dated 19.5.93 drawing up departmental proceedings against the Petitioners were passed when Shri P. Sharat Chandra was the Education Secretary. The orders dropping the charges leveled against the Petitioner Nos. 1 to 6 and closing the departmental proceedings against them were passed when Shri M. Chandramani was the Education Secretary. When Shri P. Sharat Chadnra again came to the Education Department as Commissioner, he reviewed the earlier orders closing the departmental proceedings against the Petitioner Nos. 1 to 6 by separate orders passed on 4.4.97 (Annexure-A/22 to A/27). These orders, except the name, are similarly worded and hence the relevant portion of one of them in respect of the Petitioner No. 1, Shri M. Rupoban Singh (Annexure-A/22) is extracted below:

Whereas, the matter has been re-examined by the Govt. and decided to review the aforesaid order of the Govt. under Rule 29-A of the CCS(CCA) Rules, 1965 in view of the new materials/facts which emerged recently.

Now, therefore, the Governor of Manipur, in exercise of the powers conferred by Rule 29-A of the CCS(CCA) Rules 1965 hereby reviews the said Govt. order of even number dated 8.10.96 and further orders that an amount of Rs. 17,448/- drawn by Shri M. Rupoban Singh, Asstt. Headmaster of Nambol Collegiate High

School for the period of 5.8.78 to 30.11.92 as arrears of pay and allowances in excess of admissible limit shall be recovered from him. The case against Shri M. Rupoban Singh shall be closed and the period of his suspension will be treated as spent on duty for the purpose of pay and pension as and when the above said amount of Rs. 17,448/- is completely recovered from him.

By orders & in the name of the Governor:

Sd/-(P. Sharat Chandra) Commissioner (Edn/S), to the Govt. of Manipur.

7. It transpires from the above orders that to review the earlier orders dropping the charges leveled against the Petitioner Nos. 1 to 6 and closing the departmental proceedings against them, the Disciplinary Authority invoked Rule 29-A of the CCS(CCA) Rules 1965. The relevant portion thereof reads as under:

29-A. The President may, at any time, either on his own motion or otherwise, review any order passed under these rules, when any new materials or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice...

In its application to the State of Manipur, the word "President" in Rule 29-A has to be construed as "Governor of Manipur". Save and except the statement that the Government decided to review the earlier order "in view of the new material/facts which emerged recently", there is nothing in the above order to show what were the new materials/facts. Though the learned Government Advocate accepted notices of the writ petition on behalf of the State Respondents as far back as 16.9.1997, till to-day (23.9.99) no affidavit-in-opposition has been filed to throw some light about the new materials/facts, nor at the time of hearing to-day any record has been produced by the State Respondents to show that any new materials/facts had come to their notice. Mr. Th. Modhu Singh, learned Counsel for the Petitioners, contends that if any new materials/facts had already come to the notice of the Disciplinary Authority before passing the impugned review order on 4.4.97, it would not have written to the Director of Education on 22.4.97 (Annexure-A/3). to verify the facts as to whether the teachers concerned had actually drawn arrear pay beyond entitlement. The charge against the teachers was that they drew arrear pay beyond entitlement, and the Inquiring authority exonerated them of such charge. Be that as it may, there is nothing before me to show that any new material or evidence which could not be produced or was not available at the time of passing the orders under review by the Governor had come to the notice of the Government as envisaged in Rule 29-A of the CCS(CCA) Rules, 1965. And hence the orders passed by the Disciplinary Authority State Govt. on 4.4.97 (Annexure-A/22 to A/27) invoking powers of review under the said Rule in respect of the Petitioner Nos. 1 to 6 cannot be allowed to stand. The same are quashed and set aside.

8. In respect of the Petitioner Nos. 7 to 19 in civil Rule No. 867/97 and the lone Petitioner in Civil Rule No. 927/97, contrary to the advice of the Vigilance

Commissioner, the State Govt. did not accept the finding/report of the Inquiring Authority exonerating them from the charge levelled against them. The State Government directed that excess drawl of arrear pay be recovered from them, by separate orders passed on 4.4.97 (Annexure-A/28 to A/40). These orders except the names and amounts to be recorded are similarly worded and hence the relevant portion of one of them in respect of the Petitioner No. 7 Shri Kh. Iboyaima Singh (Annexure-A/28) is extracted below:

Whereas the Disciplinary Authority has considered the said report of the Inquiring Authority and decided to discharge with the findings of the Inquiring Authority with regard to excess drawal of arrear pay amounting to Rs. 1,46,817/- by Shri Kh. Iboyaima Singh, Headmaster of Thinungai Phubala Higher School for the period of 5.8.78 to 31.3.92 under Rule 15 Sub-rule (1) of the CCS (CCA) Rules, 1965 and such excess drawl shall be recovered from him.

Now, therefore, the Governor of Manipur is pleased to close the case against Shri Kh. Iboyaima Singh, Headmaster of Thinung Phubala High School on the above condition.

The period of suspension shall be treated as spent on duty for the purpose of pay and pension.

By orders & in the name of the Governor

Sd/- (P. Sharat Chandra) Commissioner to the Govt. of Manipur.

9. It transpires from the above order dated 4.4.97 (Annexure-A/28) that in respect of the Petitioner No. 7, Shri Kh. Iboyaima Singh, the Disciplinary Authority disregard with the finding of the Inquiring Authority curiously enough, by an earlier order dated 8.10.96 (Annexure-A/21) the Disciplinary Authority agreed with the finding/report of the Injuring Authority and dropped the charge levelled against the Petitioner No. 7. Kh. Iboyaima Singh. Once agreed, the Disciplinary Authority could have invoked the power of review under Rule 29-A to undo the earlier order (Annexure-A/21) as it in respect of the Petitioner Nos. 1 to 6 by orders passed on 4.4.97 (Annexures-A/22) to A/27). It was not done in respect of the Petitioner No. 7 and on this score alone the order dated 4.4.97 (Annexure-A/28) in respect of him is liable to be set aside. The same is, therefore, set aside and quashed.

10. In respect of Petitioner Nos. 8 to 19 in Civil Rule No. 867/97 and the lone Petitioner in the Civil Rule No. 927/97, the Disciplinary Authority, never agreed with the finding of the Inquiring Authority. The orders dated 4.4.97 (Annexure-A/29 to A/40 and Annexure-A/28 in the Civil Rule) have been challenged on the ground that the Disciplinary Authority did not record its reasons for not agreeing with the findings of the Inquiring Authority as required under Sub-rule (2) of Rule 15. A mere look at the impugned order dated 4.4.97 (Annexure-A-29 to A/40 and Annexure-A/28 in the other C.R) would show that no such reason was recorded therein. Mr. Modhu Singh, learned Counsel for the Petitioner, submits

that the defect in passing the impugned orders dated 4.4.97 cannot be cured by giving reasons in the form of affidavit by the Respondents State Authority. In fact, no affidavit-in-opposition has been filed by the Respondent State Authority till to-day, more than two years after filing of these two Civil Rules and no record has been produced. Requirement of Sub-rule (2) of Rule 15 of CCS(CCA) Rules, 1965 has not been complied with and hence the impugned orders dated 4.4.97 (Annexures-A/29 to A/40 are set aside and quashed. It has been held in State of Andhra Pradesh Vs. Sree Rama Rao, that:

The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules...

11. In view of what is stated above, the impugned orders dated 4.4.97 (Annexure-A/22 to A/27 in Civil Rule No. 867/1997) in respect of Petitioner Nos. 1 to 6, the impugned order dated 4.4.97 (Annexure-A/28 in Civil Rule No. 867/97) in respect of the Petitioner No. 7, the impugned order dated 4.4.97 (Annexure-A/29 to A/40 in Civil Rule No. 867/97) and the impugned order dated 4.4.97 (Annexure-A/28 in Civil Rule No. 927/97) in respect of the lone Petitioner in Civil Rule No. 927/97) are quashed and set aside.

12. The Petitioners in both the Civil Rules stand exonerated.

13. Both the Civil Rules are allowed as indicated above. No costs.