
(2012) 12 GAU CK 0044
In the Gauhati High Court
Case No : WA No. 8 (K) of 2012

Nagaland Public Service Commission and Another	APPELLANT
Vs	
Phuholi Sema and Others	RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 315, 317, 317(2), 318
Penal Code, 1860 (IPC) — Section 120(B), 199, 403, 409, 464

Citation : (2013) 2 GLT 572

Hon'ble Judges : Subhasis Talapatra, J; Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : A. Zhimomi, Mr. Imti Longjem and Mr. S.M. Ozukum, for the Appellant; S. Dutta and Ms. Zhevi Swu, for the Respondent

Final Decision : Dismissed

Judgement

Subhasis Talapatra, J.—This writ appeal as filed by the Nagaland Public Service Commission (NPSC for short) and its Secretary is directed against the Judgment and Order dated 11.06.2012 passed by the learned Single Judge in W.P(C) No. 76(K) of 2011. The writ petitioner, the respondent No. 1 in the writ appeal, has called in question the proceedings of the Tribunal Case No. 9 of 2009 (in the Tribunal for disciplinary proceeding, Vigilance Commission, Nagaland), the Office Memorandum No. NPSC/CON-10/2009 dated 22nd July, 2009 issued by the Secretary, NPSC proposing to hold a disciplinary inquiry against the petitioner, the Order No. NPSC/CON-10-2009, dated 10th August, 2009 issued by the Secretary, NPSC appointing Shri Hukato Swu, Additional District and Sessions Judge, Tribunal for Disciplinary proceedings, Vigilance Commissioner, Nagaland as Inquiry Officer, the Inquiry Report No. TRL/10/2009, dated 14th January, 2010 submitted by the Tribunal for Disciplinary Proceedings, Vigilance Commission, Nagaland, Kohima to the NPSC against the petitioner, the Office Memorandum No. NPSC/CON-10/2009 dated 16.03.2010 issued by the Secretary, NPSC proposing the penalty of dismissal of the petitioner from service and the Office Memorandum No. NPSC/CON-10/2009 dated 31.03.2010 issued by the

Secretary, NPSC ordering dismissal of the petitioner from service.

2. The petitioner was appointed initially as typist and thereafter she was promoted to the post of the Lower Division Assistant in the NPSC. From Lower Division Assistant, the petitioner was further promoted to the post of Upper Division Assistant (UDA) and she was working to the satisfaction of the authority as per allocation and re-allocation of the works. On 02.03.2009 by an order issued by the Secretary, NPSC till the petitioner was placed under suspension on the ground that a criminal offence was being investigated against her and a disciplinary proceeding against her had been completed. The memorandum of charges was forwarded to the petitioner on 22.07.2009 by the Secretary, NPSC and in response thereto the petitioner submitted her written statement denying all the charges in Article I, Article II and Article III contained in the Annexure-1 to the said memorandum dated 22.07.2009. Thereafter, in exercise of the powers as conferred under Rule 9(2) of the Nagaland Civil Services (Discipline & Appeal) Rules, 1967 Sri Hukato Swu, Additional District and Sessions Judge, Vigilance Commission, Kohima, Tribunal for disciplinary proceeding was appointed as the Inquiry Officer to enquire into the charges framed against the petitioner by the order dated 10.08.2009.

3. On 10.08.2009 by another order, one Shri Vikhozo Vistu was appointed as the Presenting Officer. Thereafter, on 13.10.2009 Sri N. Mozhui, advocate was appointed as the co-presenting officer for the NPSC against the petitioner. The said tribunal for the Disciplinary Proceeding conducted the proceeding being the Tribunal Case No. 9 of 2009 on the said charges. On recording as many as seven witnesses the petitioner was asked to submit her written submissions, Thereafter on completion of the hearing on 20.11.2009, the said Inquiry Officer submitted a report dated 14.01.2009 holding that the charges against the petitioner under Article I and II have been proved and the charge under Article III(a) & (b) was redundant. But the finding on the Article III(c) was deferred. Ultimately the Tribunal for disciplinary proceeding came to the finding that the petitioner failed to maintain absolute integrity and also acted in a manner unbecoming of a Government Servant and had violated Rule 4(1)(i)(ii) and (iii) of the Nagaland Government Servants Conduct Rules, 1968. For reference the provisions of the said Rule 4(1) are extracted where it is provided that an Officer shall:

- (i) maintain absolute integrity,
- (ii) maintain devotion to duty, and
- (iii) do nothing which is unbecoming of a Government servant.

4. The Secretary, NPSC by the Memorandum dated 16.03.2010 concurred with the finding of the said report as regards the Article Nos. 1(a), (b), (c) (d) and (e) and II(b) and (e) and III(a) & (b) but did not agree to the findings as regards the Article II(a) and III(c). The Tribunal for disciplinary proceeding held those charges as proved and thus the petitioner was held guilty of all the charges as levelled against her. The charges for reference are reproduced:

ARTICLE-I

That Smti. Phuholi Sema while functioning as UDA (Exam Branch) during 1998 to 2008 has committed gross irregularity by misusing her official position in the following manner:-

(a) As UDA (Exam Branch) she is expected to maintain absolute integrity and devotion to duty in her discharge of official responsibility which she failed on all counts.

(b) That Smti. Phuholi Serna UDA has appropriate blank answer booklets with dishonest motive to facilitate 11(eleven) candidates to indulge in unfair means/ mal practice in the NCS/NPS & Allied Service Examination 2008 and Lecture's Recruitment Examination 2008.

(c) That Smti. Phuholi Sema UDA, in collaboration with her fellow colleague Smti Zavekholu Epao, Asstt. Supdt. (Exam. Branch) tampered 42 (forty two) answer scripts of 11 (eleven) candidates of the afore mentioned examinations by replacing the actual answer scripts written in the examination with new answer scripts written outside the examination hall.

(d) That Smti. Phuholi Sema UDA, tampered and replaced the original answer scripts at time of coding when substitute roll number was assigned in the office.

(e) That Smti. Phuholi Serna UDA and Smti Zavekholu Epao, Asstt. Supdt. was solely entrusted to do the post examination confidential work of assigning code numbers to each answer scripts while bearing such responsibility, she has taken advantage of the situation and resorted to tamper 42(forty two) answer scripts after the code numbers were given to these answer scripts.

Thereby the said that Smti. Phuholi had committed gross misconduct and failed to maintain absolute integrity and lack of devotion to duty has acted in a manner unbecoming of a Government Servant. She is therefore, charged for violation of Rule 4(i) (ii) & (iii) of the Nagaland Government Servant Conduct Rules, 1968.

ARTICLE-II

That Smti. Phuholi Sema, while functioning as UDA, NPSC has forfeited all trust and acted in such manner which leaves her integrity highly questionable by resorting to such act.

(a) While tampering some answer scripts, she has forged the signature of some invigilators in some answer scripts which explicitly proved beyond doubt that, she has indulged in such mal practice.

(b) The answer scripts replaced by her in connivance with her co-accused are found to have many inconsistencies which do not match at all the detached counterfoil from the original answer scripts.

(c) She has abetted with 11 (eleven) numbers of candidate who have no access to NPSC confidential examination work to Swap the original answer scripts with

new answer scripts which bears the same handwriting of those candidates which clearly proves beyond doubt that she was involved at every stage when the offence was committed.

Thereby the said Smti. Phuholi Sema (under suspension) had failed to maintain absolute integrity and has acted in a manner unbecoming of a Government Servant. She is therefore, charged for violation of Rule 4(i), (ii) & (iii) of Nagaland Government Servants Conduct Rule, 1968.

ARTICLE-III

That Smti. Phuholi Sema while functioning as UDA has behaved in such manner which is unbecoming of a Government servant in the following manner:-

(a) Smti. Phuholi Sema has misused her official position to secure employment of 11 (eleven) candidates by openly carrying out such favors to derive benefit for her own gain.

(b) Smti. Phuholi Sema has by involving in such mal practice has on all count committed total breach of code of conduct of a Government Servant.

(c) Smti. Phuholi Sema has been arrested by the police on 03.03.2009 in connection with Kohima North Police Station Case No. 002/09 u/s 199/477/409/403/464/471/474/120(B) IPC for her involvement in the said case while discharging her official duty.

Thereby the said Smti. Phuholi Sema has acted in a manner unbecoming of a Government Servant. She is therefore, charged for violation of Rule 4(i), (ii) and (iii) of Nagaland Government Servant Conduct Rules, 1968.

The Secretary, NPSC held on examination of the said report that the petitioner was not fit to retain in service and proposed the penalty of dismissal under Rule 7(IX) of the Nagaland Services (Discipline & Appeal) Rules, 1967. The petitioner was also given opportunity of making a further representation on the proposed penalty. The petitioner submitted the representation on 26.03.2010 to the Secretary, NPSC and questioned why the Secretary, NPSC has written at the outset "as directed".

The petitioner thus contended that some other authority had compelled Secretary, NPSC to take the action as proposed and as such there was no independent exercise of judicious appreciation of the report as the disciplinary authority. In exercise of the powers as provided under Article 318 and 320(3) of the Constitution of India, the Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008 (hereinafter referred as the Regulation, 2008) were framed with effect from 29.02.2008, the date of publication in the Nagaland Gazette, Part-III. The Regulations made it clear that the Nagaland Services (Discipline and Appeal) Rules, 1967 would apply to the Secretary and to all the members and the staff of the NPSC. All action in relation to the staff whether disciplinary or otherwise have to be taken in accordance with the

provisions of the Nagaland Services (Discipline and Appeal) Rules, 1967 and that the rules have to be read with the said Regulation, 2008. Finally the petitioner contended in the writ petition that since the Nagaland Government Servants Conduct Rules, 1968 are not applicable for the staff of the NPSC no charge under Rule 4(i) (ii) (iii) of the Nagaland Government Servants' Conduct Rule, 1968 could either be made or enquired into. From the charges as framed against the petitioner, it would transpire that these were framed within the ambit of the Nagaland Government Servants Conduct Rules, 1968 and, therefore, according to the petitioner the charges are unsustainable and as consequence thereof the entire disciplinary proceeding is illegal and void.

5. The petitioner also questioned the status of the Tribunal for the disciplinary proceeding in as much as the said Tribunal is beyond the executive periphery of the NPSC and the said Tribunal has followed all the Government instructions for conducting its proceeding in stark contrast to the provisions as ought to have been applicable in the proceeding against the petitioner. The State Vigilant Commission has the jurisdiction only over the Public Corporation, statutory bodies and undertakings of the State, subject to the confirmation by the NPSC. Therefore, the entire proceeding thus got vitiated and as such the very proceeding including the inquiry report and decisions of the disciplinary authority are liable to be interfered with. More, the petitioner submitted that the findings are based on conjecture and surmise and without any evidence whatsoever. The NPSC and its Secretary by filing the affidavit-in-opposition has categorically stated that the Secretary NPSC under the said Regulation, 2008 has been authorised to take disciplinary action against the non-gazetted officer. Further, the Regulation, 2008 also provides that, in case of non-gazetted officer the appeal shall lie to the Chairman. But the petitioner did not exhaust that alternative remedy and came directly to this Court by filing a writ petition. They averred categorically that the inquiry officer was not acting as the Tribunal for disciplinary proceeding under the vigilance commission as stated by the petitioner. As such, infirmities as alleged by the petitioner do not hold any substance at all. The appellant, the respondent Nos. 1 and 2 in the writ petition strongly defended their action and stated that the petitioner has breached the discipline and confidentiality of the examination process and on investigation her complicity was established beyond any shred of doubt.

6. The learned Single Judge by the impugned order held that as per the Regulations, 2008, the Chairman of the NPSC is the sole authority to conduct the inquiry and to take the final decision and the Chairman NPSC rectified the order and passed a fresh order dated 22.11.2010 (Annexure-17 to the writ petition). The said impugned order dated 22.11.2010 was not also passed on the inquiry report. According to the learned Single Judge, the Secretary, NPSC has no authority either to issue memorandum of the charges or to pass the final order imposing penalty and as such the Chairman NPSC has passed the impugned order dated 22.11.2010 and while passing the said impugned order dated 22.11.2010 the Chairman, NPSC has relied on the inquiry report furnished by the

Inquiry Officer on the basis of the proceeding which was set in on the charges as framed by the Secretary, NPSC. A decision of this Court in Manihar Singh Vs. Superintendent of Police, United Khasi-Jaintia Hills, Shillong & Ors. as reported in AIR 1969 Assam & Nagaland, 1 has been referred to the learned Single Judge where it has been held that:

The framing of charges, the holding of an inquiry into them, the suspension of the civil servant during the enquiry, the notice to show cause are all steps in the exercise of the disciplinary powers. All these steps are required to be taken by the disciplinary authority and not be a delegate of that authority. In the absence of a statutory provision permitting expressly or impliedly delegation of disciplinary powers, an authority other than the disciplinary authority has clearly no power to frame, on its own initiative, charges against a civil servant and hold on enquiry into them.

The learned Single Judge was thus persuaded to interfere with the charges so framed and the inquiry as conducted by the Inquiry Officer and also with the order of the dismissal based on the charges so framed by the NPSC and the Inquiry Officer. Accordingly, the impugned proceeding in Tribunal Case No. 10 of 2009 and the order dated 22.11.2010 as passed by the Chairman of the NPSC were quashed and set aside.

7. It is pertinent to point out the basis that has been provided by the learned Single Judge for interfering with the impugned order dated 22.11.2010 (Annexure 17 to the writ petition) may be segmented as follows:

(a) The NPSC does not have any separate conduct rules so they are guided by the Nagaland Government Service and Conduct Rules and accordingly the action has been taken against the petitioner. So there is nothing wrong in the order of the dismissal or in the proceeding. But it has been observed that the Government should come out with the clear-cut rules.

(b) In terms of the Office Memorandum dated 12.07.1976 (Annexure-D-17) it is required that whenever a complaint is received by the disciplinary authority on the integrity of a Government servant, the authority may take a decision in consultation with the vigilance commission, whenever necessary whether any action is to be taken or not "if he finds that there is substance in the complaint, he should get it investigated or inquired into through the departmental agencies if the vigilance commission if it so advises."

Since the vigilance commission was not consulted, the impugned proceeding and the impugned order dated 31.03.2010 were quashed.

8. Mr. A. Zhimomi, learned counsel appearing for the NPSC-appellant submitted that the basis so provided by the learned Single Judge cannot be sustained inasmuch as the said office memorandum dated 12.07.1976 has no relevance in the context and the Presiding Officer of the tribunal has been appointed merely as the Inquiry Officer after serious evaluation made by the disciplinary authority

of the imputations and the defence as set up by the delinquent. The impugned judgment cannot therefore stand the test of reasons. He further submitted that the gravity of the charge as levelled against the writ petitioner does not at all warrant an order of reinstatement by implication, else there would be failure of justice and the administrative sagacity would be the casualty.

9. On the other hand Mr. S. Dutta, learned counsel appearing for the respondent No. 1 while defending the impugned judgment further extended the legal premises to establish that the impugned order of dismissal cannot be allowed to stay in the records. He categorically submitted that unless there is the catalogued misconducts, the disciplinary authority cannot charge an employee or the workman on any misconduct that is not catalogued and the post-ipso-facto inclusion of the misconduct will not save the charge.

10. In support of his contention, Mr. Dutta relied a decision in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, where the Apex Court held that:

But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot be incorporated in the standing Orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to Western India Match Company Ltd. Vs. Workmen, in which this Court held that any condition of service if inconsistent with certified standing Orders, the same would not prevail and the certified standing Orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court.

In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this

law over a long period has belied their faith.

Lastly we may refer to *Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd.*, : 38 FJR 342 : [1970] 20 FLR 243 . This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others*, the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing Order is none the less a misconduct not strictly falling within the enumerated misconduct in the relevant standing Order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected.

11. Mr. Dutta, learned counsel has placed immense reliance on this decision to link his argument that the Nagaland Government Servants Conduct Rules, 1968 cannot be applied in relation to the service of the staffs of the NPSC even not by necessary implications in view of the provisions as laid down in Article 317 of the Constitution of India, even though the Article 317 of the Constitution of India does not lay the conditions of service of the staff of the Commission. Mr. Dutta has referred that Article with an obvious purpose of relying on a decision of the Apex Court in *Ram Kumar Kashyap and Another Vs. Union of India (UOI) and Another*, . The Article 318 of the Constitution of India is precisely the enabling provision for the State (the Governor of the State for making appropriate regulation in respect of the conditions of the service of the staff of the State PSC). The Apex Court in *Ram Kr. Kayashpa (supra)* held that:

14. The Public Service Commission is an institution of the utmost importance created by the Constitution of India under Article 315. For the efficient functioning of a democracy it is imperative that the Public Service Commissions are manned by people of the highest skill and irreproachable integrity, so that the selections to various public posts can be immunized from all sorts of extraneous factors like political pressure or personal favoritism and are made solely on considerations of merit.

15. In Special Reference No. 3 of 1997, *In Re: Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission*, , this Court discussed the role of the members of the Public Service Commissions and made the following observations with regard to their duties and qualifications:

4. Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the

Chairman and members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and members of the Commission, like Caesar's wife, must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and members of the Public Service Commissions.

At Para 31 of the same opinion, this Court further stated:

34. The credibility of the institution of Public Service Commission is founded upon faith of the common man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the Members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts.

16. It is very clear that since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of Government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions. Hence, we are of the opinion that the en bloc suspension of the 8 Members and Chairman of the Haryana Public Service Commission by the Hon'ble Governor of Haryana by an order dated 09.08.2008 under Article 317(2) of the Constitution and the impugned notification dated 09.08.2008 are valid and not liable to be quashed.

12. Mr. Dutta, learned counsel appearing for the respondent No. 1 laid serious emphasis on the observation of the Apex Court in the context of the Article 317(2) of the Constitution of India contending that the principles of service law which are ordinarily applicable in circumstances relating to dismissal of the Government employees cannot be extended to the proceeding for dismissal or suspension of the members of the State Commission. But he did not make any endeavour to refer to the distinction that has been made by the Constitution of India between provisions of Article 317 and the provision of the Article 318. Article 318 of the Constitution is relevant for regulating the conditions of service (a) of the members of the Commission and (b) of the staff of the Commission and their conditions of service. It appears that in exercise of powers conferred by the Article 318 and proviso to Article 323 of the Constitution of India, the Governor of Nagaland framed the regulations for composition and conditions of service of the Chairman, Members and Staff of the NPSC which is called the Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008. In the regulation 14(1) it has been provided as under:

(1) The Nagaland Services (Discipline & Appeal) Rules, 1967, shall apply to the Secretary and all the other members of the staff of the Commission.

(2) The Commission shall be the authority which may impose any of the penalties prescribed in Rule 7 of the Nagaland Services (Discipline & Appeal) Rules, 1967 on gazette officers. An appeal shall lie to the Governor against any order imposing any penalty passed by the Commission.

(3) The Secretary to the Commission shall be the authority who may impose any of the penalties prescribed in Rule 7 of Nagaland Services (Discipline and Appeal) Rules, 1967, in the non-gazetted members of the staff and the Chairman shall be the appellant authority.

For purpose of reference, it has been submitted that Regulation 19 has adopted other rules and orders for time being applicable to such grade of Government servants as shall be specified by the Governor to the staffs of the NPSC in the following terms:

19. In respect of any matter for which provision is not made by these regulations, the conditions of service of a person serving as a member of the Commission or its staff shall be governed by the rules and orders for the time being applicable to such grades of Government servants as shall be specified by the Governor.

On the basis of this, two conflicting submissions have been made by the parties: one by the learned counsel for the appellant to interpret the provision to hold that by extent of this provision the Nagaland Government Servants Conduct Rules, 1968 has also been adopted as conditions of service of the staff of the NPSC and on the other hand, learned counsel appearing for the respondent No. 2 submitted that a reading of the provision would show unless the Governor specifically notifies no other order or regulation would be applicable as the condition of service of the staff of the NPSC. However, Mr. Dutta, learned counsel for the respondent No. 1 also contended that such adoption is also prohibited by Article 317 and 318 of the Constitution of India, notwithstanding that the writ petitioner has not challenged the said provision in the writ petition.

13. While appreciating the submissions of the learned counsel appearing for the parties in the context as briefly narrated it is necessary to re-examine the position as taken by the NPSC in their affidavit-in-opposition. The appellants asserted in the said affidavit-in-opposition as follows:

4. In terms of the Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008 (hereinafter referred to as the Regulations), the Secretary is empowered to take disciplinary action against Non-Gazetted officers. Furthermore, the Regulations also provide that in case of Non-gazetted officers an appeal shall lie to the Chairman. In the instant matter the petitioner has failed to exhaust this available remedy. Therefore, on this ground too the petition is liable to be dismissed.

It is further held in para-18 that:

Ever since the inception of the NPSC, the rules followed have been the Nagaland Services (Discipline & Appeal) Rules, 1967 along with the Nagaland Government Service Conduct Rules, 1968. There has been no deviation in the said practice adopted by the NPSC. The fact that only the Nagaland Services (Discipline & Appeal) Rules, 1967 and not the Nagaland Government Servant Conduct Rules, 1968 is mentioned in the Regulations cannot detract from the fact that the NPSC has been following the aforesaid Rules. That apart, the said two rules are inherently intertwined, each having to be read with and in conjunction with the other and having no independent existence of the other. Therefore, there is no infirmity in the decision of the NPSC in holding that the petitioner has acted in violation of the Nagaland Government Servants Conduct Rules, 1968. The petitioner is also ill advised in claiming that she is not a Government servant. The petitioner is indisputably a person in public service drawing her salary from the State exchequer. It is obvious that the petitioner is resorting to legal sophistry and harping on technicalities to cover up her wrongful acts. It is also reiterated that the disciplinary proceedings was held and conducted in a just fair and reasonable manner and the petitioner herself-acknowledged this fact by participating in the proceedings. The reason for this turn around in her conduct is highly questionable. It is therefore, denied that the charge against the petitioner is non-existent and the disciplinary proceedings are illegal and void as alleged in this paragraph.

(emphasis added)

It further states that:

19. That the statements in paragraph 22 of the petition are misconceived and denied. It is perfectly within the competence of the State to set up the Vigilance Commission and it is wrong for the petitioner to state that the said Vigilance Commission is a non-statutory body and has no existence in law. It is ill advised for the petitioner to claim that the Vigilance Commission has no existence in law and hence any action emanating therefrom is illegal and void. The petitioner is confused by the actions of the NPSC in appointing the Additional District & Sessions Judge and Tribunal for Disciplinary Proceeding as Inquiry Officer for the conduct of the disciplinary proceedings and the functions of the said office in the Vigilance Commission. The functions of the Tribunal for Disciplinary Proceedings as a part of the Vigilance Commission are irrelevant in so far as the instant matter is concerned. The Tribunal for Disciplinary Proceedings was appointed as an Inquiry Officer to inquire into the charges framed against the petitioner and the functions of the said officer under the Vigilance Commission has no bearing on the instant matter. As earlier stated, in the prevailing facts and circumstances and given the fact that the Government in its wisdom had constituted a Tribunal for Disciplinary Proceedings, the NPSC appointed the said Tribunal to be the Inquiry Officer in the proceedings against the petitioner. There is also no legal bar for an officer from another Department to be appointed as the Inquiry

Officer. The averments of the petitioner in this paragraph are therefore without any legal basis and denied in toto.

At the cost of repetition, it is stated that the proceedings were conducted in a just, fair and transparent manner. The petitioner actively participated there in represented by her counsel, an Advocate. The sine qua non for disciplinary actions generally incorporated in all rules is the adoption of proceedings that are just, fair and transparent. Even in the absence of rules, disciplinary proceedings can be validly initiated if the aforesaid principles are maintained. In this view of the matter, it is categorically denied that the whole proceedings before the Tribunal for Disciplinary Proceedings is illegal and void as alleged in this paragraph.

20. That the statements in paragraph 23 of the petition are misleading and denied. The disciplinary proceedings were carried out in a just, fair and reasonable manner, the petitioner was represented by her counsel and given the opportunity to contest the charges framed against her. The fact that the Inquiry Officer is officially designated as Additional District & Sessions Judge, Tribunal for Disciplinary Proceedings, Deputy Commissioner (Vigilance) cannot by any stretch of the imagination be said to have vitiated the disciplinary proceedings. The petitioner harps on the fact that the Inquiry Officer has mentioned his designations in the various communiques addressed by him and seeks to convey that such actions are illegal. It is also wrong for the petitioner to state that the very existence of the Vigilance Commission is not traceable to any legal source. The use of different nomenclatures by the Inquiry Officer by virtue of his office in the vigilance Commission does not vitiate the disciplinary proceedings and it is also reiterated that the functions of the Tribunal for Disciplinary Proceedings in the Vigilance Commission has no relation whatsoever to the appointment of the said officer as Inquiry Officer in the proceedings against the petitioner. In this view of the matter, the statements in this paragraph alleging illegality and violation of law are wholly denied.

21. That the statements in paragraphs 24 and 25 of the petition are misconceived and denied. It is reiterated that the Tribunal for Disciplinary Proceedings was appointed as the Inquiry Officer in the disciplinary proceedings against the petitioner. The function of the Tribunal under the Vigilance Commission has no connection whatsoever to its appointment as the Inquiry Officer. Furthermore, the Vigilance Commission is a Governmental organization and it is absurd for the petitioner to allege otherwise. The Vigilance Commission is comprised of staff who draw their salaries from the State exchequer. Its primary function is to inquire into allegations of corruption against public servants and it is ridiculous for the petitioner to say that the Vigilance Commission is a nongovernmental organization. The petitioner conveniently relies on certain provisions of the resolution dated 9.4.76 (Annexure-A/15, page-69 to the opinion) and ignores the rest. It is also ridiculous for the petitioner to claim that she is not a Government servant or public servant "in any

legal sense". Furthermore, as earlier stated, the functions of the Tribunal for Disciplinary proceedings under the Vigilance Commission are irrelevant for its role as the Inquiry Officer in the disciplinary proceedings against the petitioner. The limitations if any, in its functions under the Vigilance Commission have no bearing in the instant matter and it is erroneous for the petitioner to allege otherwise. In sum and substance, the petitioner's case is that since there are no rules providing for disciplinary proceedings, the action initiated against her is without jurisdiction. This premise is inherently flawed and liable to be outrightly rejected.

14. It appears that the petitioner is a non-gazetted employee and as such the Secretary of the Commission is well within its jurisdiction in view of the Regulation 14 of the Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008 to draw up the disciplinary action against the respondent No. 1, and as such finding of the learned trial Court that the order so passed as regards the disciplinary action by the Secretary of the Public Service Commission, the appellant No. 2 herein was without jurisdiction is not tenable. However, the pertinent question that has surfaced and fallen for consideration of this Court is whether the misconduct as enumerated or calculated in the Nagaland Government Service Conduct Rules, 1968 would be applicable for drawing up of the disciplinary proceeding against the respondent No. 1. Other questions would survive when this question would be answered in the affirmative.

15. It is admitted position that Rule 19 has indubitably and categorically provided that in respect of any matter for which provision is not made by those regulations, the conditions of service of a person serving as a member of a Commission or its staff shall be governed by the rules and orders for the time being applicable to such grades of the Government servants as shall be specified by the Governor. In the affidavit-in-opposition neither any order of the Governor has been referred to either not it has contended that the Governor has specified by any order the adoption of the Nagaland Government Service Conduct Rules, 1968. This provisions of that conduct rules therefore cannot be operationalised in the context. The charges are all related to misconduct vis-a-vis Rule 4(1) of the Nagaland Government Service Conduct Rules, 1968. As discussed, in terms of Regulation 19, no order has been passed by the Governor specifying adoption of Nagaland Government Service Conduct Rules, 1968 or any provision thereof. As corollary, in the considered opinion of this Court there cannot be no other means to hold any statutory rules within the extent and ambit of Article 318 of the Constitution of India or the Regulation made therein. Adoption if any must be specified in terms of Regulation 19. No practice cannot substitute the procedure of adoption. Thus the contentions of the appellant in this regard in the affidavit-in-opposition (as excerpted) do not hold any substance. The principle as laid down by the Apex Court in Glaxo laboratories (I) Ltd.(supra) has acquired a paramount importance in the touch stone of principle of justice, where the Apex Court has discarded any ambivalence:

In this regard it may not be out of context to dwell upon the general aspects of the controversy whether the misconduct in absence of any specified Regulation or rules can be leveled or prescribed by the disciplinary authority or the delegates or a proceeding for inquiry on those charges can be carried out. The Glaxo Laboratories (I) Ltd. (supra) has discarded one aspect of the matter that unless misconduct is made known to the workman, the employer would not be allowed to interfere with any misconduct beyond the standing order/regulation. Misconduct has to be understood the way such regulation or the orders cataloguing the misconduct provide. Per contra, a valuable right to decide an action in terms of the prohibition, restriction or by way of definition of any conduct by any employee or the workman. In the memorandum of charges pressed against the civil servants and the employees of public undertakings or private undertakings, the words "failed, to maintain absolute integrity and or his acts were unbecoming of a Government servant/Public Servant/employee etc." are allegations per se the Rule 4(1) of CCS (Conduct) Rules. Rules 3 to 22 of the Central Civil Services (Conduct) Rules, are *pari-materia* to provisions as available in Nagaland Government Service Conduct Rules, 1968 in the nature of exhortation that the acts mentioned therein should not be done or omitted to be done, but what those provisions have clearly specified are prohibition or restrictions. Obviously the acts or omissions mentioned cannot be exhaustive. This aspect of matter has been considered in detail by the Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, where the Apex Court has observed that the Government has prescribed by the Conduct Rules a code of conduct to be observed by the members of the All India Service and other categories of employees wherever those are brought to regulate the service. Rule 3 of the Conduct Rules is of general nature which provides that every member of the service shall at all time maintain absolute integrity and devotion to duty and shall not do anything which is unbecoming of a member of the service. Lack of integrity, if proved would certainly entail penalty. Failure to come up to the highest expectation of our officer holding a responsible post, lack of aptitude or qualities of leadership would not constitute failure to maintain devotion to duty. The expression "devotion to duty" appears to have been used as something opposed to indifference to duty or easy going or light hearted approach to duty. If Rule 3 was the only rule in the Conduct Rules, it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe a code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct. This code of conduct being not exhaustive, it would not be prudent to say that only that act or omission which is contrary to the various provisions would constitute misconduct for the purpose of the disciplinary action. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto, would certainly constitute misconduct. Some other act or omission may as well act in derogation or contrary to Conduct Rules, save general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest

standard or administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. The Apex Court clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses but those deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings penalty.

The code of conduct as set out in the Conduct Rules or in other orders clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with the code and discharge his duty in service in violation or disregard then it is misconduct. Disregard to the conditions of the service may constitute misconduct as held in *Laws Vs. London Chronicle Indicator News Papers*, (1959) 1 WLR 968 CA.

16. A closer scrutiny of the decision of the Supreme Court in *Union of India Vs. J. Ahmed* (supra) and the decisions referred to in *S.L. Kalra* leads us to the conclusion that so long as there is nothing to indicate in the rules than only the enumerated items of misconduct should be considered as misconduct. The decision in *J. Ahmed*'s case would apply to Government servants and employees of public undertakings, local authorities and others coming within the definition of State under Article 12 of the Constitution. Therefore the decisions of the Supreme Court which are applicable to workmen governed by the industrial law or by virtue of the standing orders and mutual agreement (the award, in the common parlance) cannot be of much help in deciding cases dealing with the misconduct of the civil servants and public servants.

17. It is further answered and observed that in *Ahmed*'s case that the code of conduct being not exhaustive, it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary to the code of conduct would definitely constitute misconduct. Some other act or omission may as well constitute misconduct which are entwined or coupled therewith and within a broader spectrum.

18. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, the Apex Court Held that even non-refund of the house building loan in breach of the condition will not amount to misconduct inasmuch as such act does not come within the sweep of the misconduct as provided in the Conduct Rules and ultimately it has been held in *Kalra*'s case that when the person is visited with the penal consequences as a result of misbehavior or misconduct, the misconduct should be specifically mentioned in the rule.

19. On considering this aspect of the matter this Court finds no necessity to delve into the other aspects as referred in the writ petition or in the appeal as filed by the NPSC regarding the crux of the decision or the procedural proprieties. Since admittedly, the Nagaland Government Servants Conduct Rules, 1968 has neither been adopted in terms of the Regulation 19 of Nagaland Public Service Commission (Chairman, Members & Staff) Regulations, 2008; the misconduct of which the writ petitioner has been charged for cannot stand the test of law, thus the writ petitioner cannot be charged under the misconduct as defined and provided in Rule 4(1) of the Nagaland Government Servants Conduct Rules, 1968. Nowhere in the affidavit-in-opposition the appellants have set up a case that apart the Nagaland Government Servants Conduct Rules, 1968, they have their own notification by delineating (he misconduct

20. Having confronted with this situation this Court is constrained to hold that despite reservation as expressed as regards the impugned judgment and order the appeal is devoid of any merit and as such the impugned judgment and order for the reasons as aforesaid is not required to be interfered with. As consequence thereof, the impugned memorandum dated 22.07.2009 (Annexure A-6 to the writ petition), the proceeding of the Tribunal case No. 9 of 2009, the order dated 10.08.2009 (Annexure A-8 to the writ petition), the Inquiry Report dated 14.1.2010 (Annexure A-11 to the writ petition), the Office Memorandum dated 31.03.2010 (Annexure A-12 to the writ petition) are hereby quashed and the writ petition is allowed. Resultantly, this appeal filed by the NPSC and its Secretary stands dismissed.

21. Before parting with the records, the appellants are directed to restore the status of the petitioner as the UDA forthwith, if such restoration is not deterred by any other order passed by the competent authority, within a period of three months from today providing all consequential pecuniary and service benefits. In the circumstances, the parties are to bear the costs.