
(2015) 03 MAN CK 0001

In the Manipur High Court

Case No : Writ Petition (C) No. 1030 of 2014

Narengbam Priyobrata

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19(4)
Penal Code, 1860 (IPC) — Section 420, 465

Citation : (2015) 03 MAN CK 0001

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : Kh. Tarunkumar, for the Appellant; Ch. Sundari, Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri Kh. Tarunkumar, learned counsel appearing for the petitioner and Smt. Ch. Sundari, learned Govt. Advocate appearing for the respondents.

2. In the present writ petition, the order of suspension dated 02-06-2014 issued by the Director General, State Academy of Training, Manipur is being challenged by the petitioner.

3. According to the petitioner, he was initially appointed to the post of Lower Division Clerk at the State Academy of Training, Manipur vide order dated 10-11-1986 and was later appointed on promotion to the post of U.D.C. vide order dated 14-03-2007. In consideration of his services, the Secretary (AR), Government of Manipur vide its order dated 23-02-2009 allowed the petitioner to look after the works of Office Superintendent, State Academy of Training, Manipur without any extra remuneration.

3.1 The petitioner was placed under suspension vide order dated 17-12-2012 issued by the Director General, State Academy of Training, Manipur in

contemplation of a disciplinary proceeding and accordingly, the Director General, State Academy of Training issued a memorandum dated 12-02-2013 enclosing therewith a statement of imputations of misconduct/misbehaviour alleging that the petitioner had manipulated in the declaration of result of 71th batch of State Accounts Training conducted by the State Academy of Training, Manipur. However, after considering the written statement of defence of the petitioner, the Director General, State Academy of Training, Manipur awarded a minor penalty of withholding of 2 (two) increments (without cumulative effect) with a warning that the petitioner should not repeat such act in future and in consequence thereof, the suspension order was revoked by treating the period of suspension from 17-12-2012 to 04-03-2013 as on duty for all purposes.

3.2 The Director General, State Academy of Training, Manipur issued another order dated 02-06-2014, impugned herein, placing the petitioner under suspension with immediate effect in exercise of power conferred under sub-rule (1)(b) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The said order dated 02-06-2014 is being questioned by the petitioner in the present writ petition on the ground of the same being not sustainable in the eyes of law.

4. The present writ petition is contested by the respondents by filing an affidavit-in-opposition contending inter-alia that the petitioner was placed under suspension considering the gravity of the repeated offence committed by the petitioner which had posed a threat to the integrity and prestige of the Academy; that a criminal case under FIR No. 116(6)2014 IPC U/S. 420 465 IPC of Lamphel P.S. is pending and that after getting a detailed report from the Police, a Review Committee was constituted which, after examining the same, recommended for extension of suspension of the petitioner's service for another 6 (six) months w.e.f. 31-08-2014. In pursuance of the said recommendation of the Review Committee, the Director General, State Academy of Training issued an order dated 17-01-2015 extending the period of suspension.

5. The learned counsel appearing for the petitioner, relying upon the provisions of sub-rule (6) and (7) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, has submitted that the suspension order dated 02-06-2014 is not sustainable in the eyes of law for the simple reason that it was not reviewed before the expiry of 90 days from the date of order of suspension. To substantiate his contention, the learned counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in the case of Union of India (UOI) and Others Vs. Dipak Mali, and the decision rendered in the case of Civil appeal No. 9454 of 2013, Union of India and Anr. v. Ashok Kumar Aggarwal on 22-11-2013.

6. Sub-rule (6) and (7) Central Civil Services (Classification, Control and Appeal) Rules, 1965 are reproduced herein below:--

"(6) An order of suspension made or deemed to have been made under this rule

shall be reviewed by the authority which is competent to modify or revoke the suspension [before the expiry of ninety days from the effective date of suspension] on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before the expiry of the extended period of suspension. Extension of suspension shall not be for a period not exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

It appears that the sub-rules (6) and (7) came to be inserted by way of amendment vide Notification dated 23-12-2003 and the sub-rule (6) was substituted later vide Notification dated 16-06-2007. It may be noted that the wordings of sub-rule (6) and (7) are very clear and unambiguous which require no interpretation at all.

7. Before going into the merit of the case, it is appropriate for this court to deal with one aspect which the learned Government Advocate appearing for the respondents raised during the course of hearing on 27-02-2015 namely she was not sure whether sub-rule (6) and (7) had been adopted by the Government of Manipur or not and that she would like to seek instruction thereon. Time till 11-03-2015 was granted so as to enable her to seek instruction as mentioned above. On 18-03-2015 when the above matter was taken up for hearing, the learned Government Advocate was unable to produce any document to show that the said sub-rule (6) and (7) had not been adopted by the Government of Manipur and accordingly, the matter was to be heard on merit. It is not in dispute that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 have been adopted by the Government of Manipur. But in case the State Government wishes to contend that only the sub-rule (6) and (7), inserted by way of amendment, have not been adopted, a duty is cast on the State Government to produce any document which specifically states that the sub-rule (6) and (7) have not been adopted and in the absence of such a document, this court will have no option but to go by the undisputed fact that the main Central Civil Services (Classification, Control and Appeal) Rules, 1965 which would include the sub-rule (6) and (7) after amendment forming part thereof, have been adopted by the Government of Manipur. At this juncture, the contention of the learned counsel for the petitioner that the conduct of the State Government has shown that sub-rule (6) and (7) have been adopted, is relevant and has some force because in their affidavit filed on behalf of the respondents, it is stated that a Review Committee was constituted which recommended for extending the period of suspension of the petitioner. The question of constitution of a Review Committee would not have arisen without sub-rule (6) and (7) being adopted. Be that as it may, after the hearing was over on 18-03-2015, this court granted the respondents one week's time for filing additional documents, if any.

But on enquiry from the registry, it is found that till date, no additional document has been filed by the respondents.

8. As regards the merit of the case, there is force in the submission of the learned counsel appearing for the petitioner that the issues involved herein have been settled by the decisions rendered by the Hon''ble Supreme Court in the case of Union of India and ors v. Dipak Mali (supra), the para 10 and 11 of which are reproduced herein below:

"10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioner's case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of ninety days.

11. The case sought to be made out on behalf of the petition Union of India as to the cause of delay in reviewing the respondent's case, is not convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension."

This judgment has been referred to and relied upon by the Hon''ble Supreme Court in the case of Civil Appeal No. 9454 of 2013, Union of India and Anr v. Ashok Kumar Aggrawal disposed of on 22-11-2013 wherein it has been reiterated that if the initial or subsequent period of extension has expired, the suspension order comes to an end because of the expiry of the period provided under rule 10(6) of the Rules, 1965. Subsequent review of extension thereof is not permissible for the reason that earlier order had become invalid after expiry of the original period of 90 days or extended period of 180 days. It may be noted that relying upon the said judgments of the Hon''ble Supreme Court, this court also has passed two judgments dated 22-04-2014 in W.P. (C) No. 847 of 2013, Shri Th. Tombi Sing v. State of Manipur and ors and 11-03-2015 in W.P. (C) No. 1032 of 2014, Shri B. Lalhari Sharma v. State of Manipur and ors.

9. Coming to the facts of the present case, it may be noted that the petitioner was placed under suspension vide order dated 02-06-2014 and therefore, as mandated by the provisions of sub-rule (6), the said suspension order ought to have been reviewed before the expiry of 90 days i.e. by 02-09-2014. From the averments made in their affidavit, it is evident that the Review Committee was constituted only on 15-01-2015 after the expiry of 90 days and on its recommendation, the suspension order was extended for six months with effect from 31-08-2014 vide order dated 17-01-2015 issued by the Deputy Director, State Academy of Training, Manipur which is impermissible under the provisions of sub-rule (6). Since the suspension order had not been reviewed within the time prescribed in the said sub-rule (6), the said suspension order had already become invalid before the order dated 17-01-2015 came to be issued and the said suspension order could not be validated by it because of the provisions of sub-rule (7) of the said rules, 1965. Hence, the suspension order dated 02-06-2014 is liable to be quashed and set aside.

In view of the above observation, the present writ petition is allowed and accordingly, the suspension order dated 02-06-2014 is quashed and set aside with no order as to cost.