
(2011) 03 GAU CK 0053
In the Gauhati High Court
Case No : Writ Petition (C) No. 791 of 2009

Ngultuolien

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1)

Citation : (2011) 2 GLT 587

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : A. Jagatchandra, for the Appellant; S. Nepolean, GA, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. A. Jagatchandra, learned Counsel for the Petitioner and also Mr. S. Nepolean, learned G A appearing on behalf of the Respondents.

2. The present writ petition is the second writ petition filed by the Petitioner for the same subject matter, i.e. Departmental Enquiry against the Petitioner initiated vide Memorandum No. 2/97/2005-ED (S) dated 19.04.2006 issued by the Director of Education(S), Government of Manipur.

BRIEF FACT

3. The Petitioner is, now, retired from service on superannuation. The Petitioner, while posted as Head Clerk in the Zonal Education Officer(ZEO), Churachandpur, was placed under suspension vide order of the Director, Education(S), Government of Manipur being No. 2/97/2005-ED (S) dated 25.05.2005 issued in exercise of power conferred upon him by Sub-rule (1) of Rule 10 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965 in contemplation of a disciplinary proceedings for alleged involvement in cases of unauthorized withdrawal of pension, arrear pension and arrear pay amounting to Rs. 12 crores

from the Government account. Later on vide memorandum dated 19.04.2006 the Disciplinary Proceedings/Departmental Enquiry was initiated against the Petitioner for one article of charge mentioned therein. Vide order of the Director, Education (S), Government of Manipur dated 19.04.2006, one Shri R.K. Sukumar Singh, MCS Deputy Commissioner (Departmental Inquiry), Government of Manipur was appointed as Inquiry Authority to enquire into the charges framed against the Petitioner. Petitioner also filed his written statement of defence to the said article of charge for which Departmental Enquiry against the Petitioner had been initiated vide memorandum dated 19.04.06.

4. As there was no progress in the said Departmental Enquiry against the Petitioner, Petitioner was reinstated in service vide order of the Government of Manipur being No. 30/ 9/06-SE(S) dated 02.03.2007 without prejudice to the departmental proceedings against the Petitioner. Subsequently, Petitioner was allowed to retire from service w.e.f. 31.12.2007 on attaining the age of superannuation.

5. As there was considerable delay in completing the Departmental Enquiry, Petitioner had approached this Court by filing WP(C) No. 151 of 2009 which had been disposed of by this Court by passing order dated 04.05.2009 directing the Respondents to complete the Departmental Enquiry against the Petitioner within a period of four months from the date of receipt of certified copy of the order. It was also made clear that if the Departmental Enquiry is not completed within the stipulated period of four months, the Departmental Enquiry against the Petitioner shall be deemed to have been closed. He was further directed to co-operate the Disciplinary Authority in completing the Departmental Enquiry and time taken by the Petitioner in seeking adjournment shall be excluded in computing the stipulated period of four months.

6. In the present writ petition, it is stated that the Petitioner fully cooperated with the inquiry authority but for the reasons best known to the inquiry authority, no action was taken up by the Inquiry Authority for completing the said Departmental Enquiry against the Petitioner within the stipulated period mentioned in the judgment and order of this Court dated 04.05.2009 passed in WP(C) No. 151 of 2009. Even though there are clear directions from this Court in the judgment and order dated 04.05.2009 that the Departmental Enquiry against the Petitioner should be completed within the period of four months from the date of receipt of certified copy of the order, the Inquiry Authority i.e. the Deputy Commissioner (Departmental Enquiry) is sleeping over the matter. In other words, no action has been taken up by the Deputy Commissioner (Departmental Enquiry) for completing the said Departmental Enquiry. Hence the present writ petition, i.e. WP(C) No. 71 of 2009 wherein the present writ petition prays for a direction from this Court to the State Respondents to complete and finalize the processing of pension paper and forward the same to the Deputy Accountant General, Manipur for payment of all permissible pensionary/retirement benefits within the stipulated period as the said Departmental Enquiry against the

Petitioner shall be deemed to have been closed.

7. It is stated that the ZEO, Churachandpur, Government of Manipur under his letter dated 24.04.2008 submitted pension paper, to the Additional Director of Education(S), Government of Manipur, for the Petitioner along with all other required documents for onward transmission to the Joint Secretary (Pension Cell), Government of Manipur.

8. The Respondents have filed their affidavit in opposition. In the affidavit in opposition filed by the State Respondents, it is stated that in view of the order passed by this Court on 04.05.2009 in WP(C) No. 151 of 2009. the Deputy Commissioner (DE). Government of Manipur had been requested to take necessary actions to complete the pending Departmental Enquiry initiated against the Petitioner within the stipulated period given by the Hon"ble High Court by a letter dated 20.05.2009. Again by another letter dated 21.01.2010 the D.C.(DE) had been requested to convey reasons for the delay in completion of the Departmental Enquiry initiated against the Petitioner at the earliest. However, there was no reply from the Deputy Commissioner (DE), Government of Manipur. The State Government having no alternative, had already submitted pension paper for granting provisional pension to the Joint Secretary (Pension Cell). Government of Manipur.

9. From the above fact it is crystal clear that this Court had directed the Inquiry Officer i.e. the Deputy Commissioner (DE) to complete the Departmental Enquiry against the Petitioner within a period of four months from the date of receipt of certified copy of the order of this Court dated 04.05.2009 passed in WP(C) No. 151 of 2009, copy of which was received by the Deputy Commissioner (DE) on 20.05. 2009 vide legal notice of the Petitioner's advocate dated 14.05.2009 and also the Inquiry Authority i.e. the Deputy Commissioner (DE) had been requested by the State Government not only once but twice vide letters dated 20.05.2009 and 21.01.2010 to complete the Departmental Enquiry within the stipulated time frame given by this Court in the said judgment and order dated 04.05.2009 passed in WP(C) No. 151 of 2009. The Deputy Commissioner (DE), Government of Manipur did not take steps for completing the said Departmental Enquiry against the Petitioner within the time frame given by this Court in the judgment and order of this Court dated 04.05.2009. While the present writ petition is pending misc. case being MC (WP(C)) No. 83 of 2010 was filed by the Deputy Commissioner (DE)/ Inquiry Authority long after expiry of the period of four months mentioned in the judgment and order of this Court dated 04.05.2009 passed in WP(C) No. 151 of 2009 for extension of further six months" time for completion of the Departmental Enquiry pending against the Petitioner for the reasons that after passing the said order dated 04.05.2009 there were frequent transfer and posting of the incumbent of the office of Deputy Commissioner (DE); it appears that this Court was not prima facie satisfied with the reason for extension of six months time for completion of the Departmental Enquiry mentioned in the said Misc. Case; and accordingly passed order dated

30.04.2010 directing Mr. S. Nepolean, learned GA appearing for the Applicant i.e. Deputy Commissioner (DE) to produce the relevant file i.e. relevant DE file before this Court on the next date i.e. 07.06.2010. On 07.06.2010 Mr. Nepolean, learned GA appearing for the Applicant i.e. the Deputy Commissioner (DE) prayed for listing the case after vacation and prayer was granted.

10. About six months after passing of the said order dated 30.04.2010, the present case was listed on 22.02.2011 for production of the relevant Departmental Enquiry File but the said DE file was not placed before this Court for the reasons best known to the Deputy Commissioner (DE), and this Court having no alternative passed the order dated 22.02.2011 directing the concerned Deputy Commissioner (DE) to appear in person before this Court along with the relevant DE File on 28.02.2011. On 28.02.2011 Smt. Roshita Haobam, MCS, Deputy Commissioner (DE) appeared in person along with the DE File before this Court. It is really shocking to see the DE File inasmuch as no further proceeding of the Departmental Enquiry was taken up by the Deputy Commissioner (DE) in pursuance of the directions of this Court in the judgment and order dated 04.05.2009 passed in WP(C) No. 151 of 2009. But as stated above, the Deputy Commissioner (DE), Respondent No. 3 in the present writ petition had filed affidavit in opposition and also Misc. Case for extension of time on the ground that because of frequent transfer and posting of incumbent of the office of the Deputy Commissioner (DE) the inquiry against the Petitioner could not be completed within the stipulated period mentioned in the judgment and order dated 04.05.2009 passed in WP(C) No. 151 of 2009.

11. On perusal of the file, it is clear that statements made by the Respondent No. 3, the Deputy Commissioner (DE). Government of Manipur made in the affidavit in opposition and also in present misc. case are not correct. For easy reference, whole notings of the proceeding of the Departmental Enquiry against the petitioner in the file for Departmental Enquiry File, are quoted hereunder:

Kindly see Memorandum by the Director of Education (S), Manipur at page 1/e.f. and its enclosures from pages 2-4/e.f, proposal for holding of D.E. against Shri Ngultolian, Head Clerk, C.C.Pur, Manipur. The appointment of Inquiry Officer and Presenting Officer may also be seen at pages 5-6/e.f. See the relevant documents are available in file.

Now, we may fix a suitable date of hearing for preliminary hearing and may be fixed on 17.10.06 at 1.30 p.m. Accordingly fair copies are prepared and placed below for kind signature.

Submitted pl.

Akbar 11.09.06

Sd/- D/C(DE)

(2) Signed, Pl.issue

Akbar

Sd/- 11.09.06

(3)

The charged official (C.O) Shri Ngultolian, Head Clerk, Zonal Education Officer, Churachandpur (now under suspension); and the Presenting Officer (P.O) Dr. T. Geetchandra Sharma, i/c SRO, Directorate of Education (S) are present for preliminary hearing. Read out the articles of charges to the Charged Official (C.O) and he denies the charges, Hence D.E against the C.O shall take its own course. P.O is directed to furnish the names of the Prosecution witnesses listed in Annexure-IV of the charge memorandum on or before 26.10.2006. Fix 18.11.2006 at 1.30 p.m. for examination of p/witness. Issue notice accordingly soon after the P.O. furnished the names of the P/witnesses.

Sd/- 17.10.2006

(4)

C.O. is present and P.O. not present. The documents listed in Annexure -III and the names of the P/witnesses listed in Annexure-IV are not yet available. Communicate the department to furnish the documents and names of the p/witnesses as early as possible. May issue notice for hearing to the concerned officials only after receiving the required documents and names of the P/witnesses from the department.

Sd/- 18.11.06

(5)

Ref : Note(4) ante

F.E is placed below for kind signature.

Submitted pl.

Sd/-DC(D.E)

(6)

Signed Pl. issue

(7)

ODD/legal Edu. (S) may be call for his comment

Sd/- 06.11.10

12. As stated above, since the statement of the Deputy Commissioner (DE) in the affidavit in opposition filed in the present writ petition and also statement in the MC (WP(C) No.83 of 2010) for extension of time for completing the Departmental Enquiry are not correct, it appears that the Deputy Commissioner

(DE) was trying to avoid the production of DE File but later on as ordered by this Court the said DE file was made available before this Court. The Apex Court in City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, held that it is the constitutional obligation and duty of the State to place the true and relevant facts by filing proper affidavit for enabling the Court to discharge its constitutional duty.

13. In the instant case, the DC (DE) is not discharging the obligation and duty to place the true and correct relevant fact by filing proper affidavit for enabling the Court to discharge its constitutional duties. Respondent No.3 Deputy Commissioner (DE) who had utterly failed to discharge the said obligation should not be allowed to go scot-free in the interest of justice and also for better administration of the Government. Accordingly, the Chief Secretary, Government of Manipur is to conduct an inquiry as to why the Deputy Commissioner (DE) had been sleeping over the DE in spite of specific direction from this Court and also request by the State Government for completing the DE vide said letters dated 20.05.2009 and 21.01.2010 to complete the DE within the stipulated period mentioned in the judgment and order of this Court dated 04.05.2009. Instead of discharging his obligation and duty, the Deputy Commissioner (DE) had filed affidavit in opposition and also the said misc. case stating false and concocted fact which are not supported by the records.

14. The Chief Secretary, Government of Manipur has to complete the said inquiry against the concerned DC (DE) within a period of four months from the date of receipt of this order and shall initiate disciplinary proceeding against the concerned erring Deputy Commissioner (DE), Government of Manipur. Action taken report by the Chief Secretary, Manipur should also be intimated to the Registry of this Bench within five months from the date of receipt of certified copy of this order.

15. For the reasons discussed above, as ordered earlier, the Departmental Enquiry against the Petitioner shall be deemed to have been closed. Accordingly, Respondent Nos. 1,2 and 4 have to finalize the processing of pension paper for the writ Petitioner within three months from today. It is made clear that the Respondents should not mix up the preparation of pension paper of the Petitioner with the inquiry against the said Deputy Commissioner (DE), Government of Manipur pursuant to the direction of this Court by the Chief Secretary, Government of Manipur.

16. Registry is directed to furnish a copy of this order to the Chief Secretary, Manipur for taking prompt steps as directed by this Court. . 17. With the above observation and direction, the writ petition is allowed.