
(2004) 01 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 4532 of 1996

Pannalal Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-01-2004

Acts Referred:

Citation : (2004) 2 GLR 342 : (2005) GLT 369 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.K. Bhattacharya and B.R. Dey, for the Appellant; R.P. Kakoty, A.K. Dutta, N. Islam and B.K. Kar, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The writ petitioner, who, at the relevant point of time, was working as the Registrar of the Regional Engineering College, Silchar, now National Institute of Technology has challenged an order dated 16.8.1996 dismissing him from service. It must be noted at this stage that the writ petitioner had retired from service during the pendency of the present writ proceeding and, therefore, the relief, if any, that the writ petitioner may be entitled to would be notional as well as financial.

2. Mr. A.K. Bhattacharyya, learned senior counsel for the writ petitioner in course of his very elaborate arguments, though has contended the impugned order of dismissal dated 16.8.1996 to be contrary to law on a number of grounds and reasons, priority to one issue, which goes to the root of the matter, has been accorded by the learned counsel. As the arguments sought to be advanced in respect of all other issues, would become redundant if the aforesaid prime issue is decided in favour of the petitioner, this Court has considered it appropriate to take up the aforesaid core issue first reserving consideration of the other questions to a later stage, if required.

3. The argument of Mr. Bhattacharyya, learned counsel for the petitioner is that

the impugned dismissal of the petitioner would be wholly unauthorized in law, inasmuch as, the decision to dismiss the petitioner has been taken by the Principal of the College whereas under the norms in force, it is the Board of Governors, who alone would be competent to decide on the question of punishment to be imposed in respect of categories of employees to which the writ petitioner belongs. Mr. Bhattacharyya has tried to bring, home the aforesaid point, i.e., that it is the Board of Governors, who would be the competent authority to impose punishment, if any, by referring to the several resolutions taken in the earlier meetings of the Board of Governors to the above effect which resolutions have been placed on record. Mr. R.P. Kakaty, learned counsel for the Respondents, confronted with the decision of the Board as expressed, in the earlier resolutions, has admitted the fact that it is the Board of Governors alone, who would be the competent authority to finally decide on the question of punishment to be imposed on the petitioner. The admitted fact that the Writ Petitioner was appointed by the Board and not by the Principal has been also relied upon as a supplementary plank of the argument that it is the Board of governors alone who would be authorised, to make the decision in question.

4. The question, therefore, that needs resolution is whether the punishment of dismissal imposed on the petitioner emanates from a decision taken by the Board of Governors. As the issue is required to be reconciled on the basis of the records, Mr. R.P. Kakaty, learned counsel for the writ petitioner has placed before the Court all such records, which, in his comprehension, are relevant, to enable the Court to adjudicate the question.

5. The charges levelled against the petitioner m as many as 5 charge-sheets issued from time to time, inter alia, were in respect of certain financial irregularities allegedly committed by the petitioner while working as the Deputy Registrar (Accounts). The agenda items as well as the proceedings of the 68th meeting of the Board held on 11.3.1996 have been placed before the Court by Mr. R.P. Kakaty, learned counsel for the Respondents. At the invitation of the learned counsel, the Court has looked into the agenda Item No. 6 as well as Item Nos. 6 and 24 of the proceedings of the said meeting. A perusal of the aforesaid items reveals that in so far as agenda Item No. 6 is concerned, what was decided is that the Board of Enquiry winch was constituted to go into the charges levelled against the petitioner having completed its assigned task, the report of the enquiry was to be placed before the Board of Governors for necessary discussion and further action. Item No. 6 of the proceeding, separately recorded, reveals that after the report of the enquiry was placed before the Board of Governors, the Board authorized the Principal to prepare a draft show cause notice on behalf of the Board to be served on the writ petitioner before imposing any punishment and to send a copy of the same to the Ministry of Human Resources with a request to send their views within 21 days. Thereafter, the Board authorized the Principal of the College to submit the draft show cause notice to the Chairman for service of the same on the writ petitioner and thereafter to take necessary action as may be decided by the Chairman/Board. Nowhere in the 68th Meeting of the

Board of Governors, any decision with regard to any punishment to be imposed on the petitioner was taken. The matter considered by the 68th Meeting of the Board was only in respect of the second show cause, i.e., notice to show cause as to why penalty should not be inflicted. In so far as the Item No. 24 of the Proceedings of the 68th Meeting is concerned, it appears that the aforesaid item relating to alleged misappropriation of College money by the petitioner was discussed along with Item No. 6 and the Principal was authorized to "do the needful" accordingly.

6. After the 68th Meeting of the Board of Governors held on 11.3.1996, an undated note was put up before the Chairman of the Board of Governors by the Principal of the College forwarding to the Chairman a copy of the draft show cause notice to be served on the writ petitioner. On the body of the said note, the Chairman passed the following order "Perused and approved, may be issued". It was signed on 3.6.1996. Thereafter another note dated 8.7.1996 was put up by the Principal before the Chairman informing the said authority that the second show cause notice was served on the writ petitioner, which though received by him on 10.6.1996, had not been responded to by the writ petitioner. Thereafter it was suggested to the Chairman that as per decision of the Board in its 66th Meeting held on 7.12.1994, the petitioner may be dismissed. Paragraph 3 of the aforesaid note would be relevant and, therefore, is being extracted herein :

"As such as per the decision of the Board of Governors taken in 66th meeting held on 7.12.1994 vide Item No. 7(a) and Item No. 8 and in view of the facts stated above, he requires now to be issued with Dismissal Order as per the decision of the Board of Governors mentioned above."

7. A reading of the aforesaid paragraph 3, makes it abundantly clear that what was suggested to the Chairman is that in view of the decision of the Board of Governors taken in the 66th Meeting, held on 7.12.1994 as per Item. Nos. 7A and 8 and in view of the fact that the second show cause notice was already served on the writ petitioner, the dismissal order was required to be issued. This note was approved by the Chairman with the direction that termination letter may be issued. The aforesaid approval is dated 9.8.1996. Pursuant thereto, the impugned order dated 16.8.1996 was issued by the Principal.

8. The proceedings of the 69th Meeting of the Board, particularly Item No. 2 of the proceedings, would also be relevant in this regard. The proceedings in respect of the aforesaid Item, therefore, may be conveniently extracted :

"Item No. 2 : To receive a note on the actions taken and progress made on the resolutions of the last meeting.

Under Item - 6B68/96 :

In pursuance of the resolutions and direction of the Board, actions were taken and dismissal order had been issued to Sri Pannalal Choudhury, Registrar (under suspension) on 16.8.1996 and his name had been struck off from the strength of

the Regional Engineering College, Silchar Society. The Board noted the compliance of the action taken.

The Board also noted the actions taken against Item No. 7, 8, 10, 15, 24 and 25 said approved the same."

8. The moot point that has to be answered by the Court on the basis of the records produced, the contents of which have been noted herein above, is whether any decision was taken by the Board of Governors to impose the punishment in question on the writ petitioner. The proceedings of the 68th Meeting held on 11.6.1996 clearly reflects that no such decision was taken. The proceedings of the 69th Meeting explicitly recites that the dismissal order in respect of the writ petitioner was issued in pursuance of the resolution and directions of the Board. It is impossible to have another meeting of the Board in between the 68th and 69th Meetings. The undated note of the Principal as well as the second note dated 8.7.1996 reliance on which has been placed on behalf of the Respondents, would go to show that while the first note is only with regard to the second show cause notice to be issued to the petitioner, the second note of the Principal dated 8.7.1996 recites that the second show cause notice having been served on the writ petitioner, he is required to be dismissed as per the decision of the Board of Governors taken in the 66th Meeting held on 7.12.1994 particularly against Item Nos. 7A and 8. Though logically it is incomprehensible as to how in the 66th Meeting any decision to dismiss the writ petitioner could have been taken, inasmuch as, in the subsequent meeting, i.e., 68th Meeting the stage of the Second Show Cause had only been reached, the proceedings in respect of Item No. 7A of the 66th Meeting as made available by the learned counsel for the Respondents has been perused. No such decision, as mentioned in the note of the Principal dated 8.7.1996, was recorded under Item No. 7A. The proceedings in respect of Item No. 8 of the said 66th Meeting have not been made available. However, the same would hardly make any material difference in view of the stage of the proceeding that had been reached in the 68th Meeting, as already noted. No other material reflecting any such decision of the Board of Governors to punish the petitioner having been placed before the Court, the conclusion that is inescapable is that the authority, competent to decide on the question of punishment, took no such decision. No such decision was taken by the Principal either. The dismissal of the petitioner followed the approval granted by the Chairman to the suggestion of the Principal that the Writ Petitioner be issued with an order of dismissal as already decided by the Board in its 66th Meeting held on 7.12.1994, a fact which has been found to be non-existent. The approval of the Chairman being in respect of a wholly non-existent fact can have little acceptance in law.

9. In view of the conclusion reached by the Court on the core question, this Court considers it wholly unnecessary to go into any other questions raised on behalf of the parties.

For all the aforesaid reasons and in view of the foregoing discussions, the

impugned dismissal of the petitioner made by order dated 16.8.1996 is hereby set aside. The Writ Petition is allowed. Consequential reliefs in terms of notional service benefits as well as pay and allowances as may be due to the writ petitioner shall follow.

10. The writ petition shall stand allowed as indicated above.