
(1989) 11 GAU CK 0002
In the Gauhati High Court
Case No : Civil Revision No. 251 of 1989

Probodh Kumar Dihingia

APPELLANT

Vs

Assam Tea Corporation Ltd.

RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Assam Tea Corporation Limited Service Regulations, 1982 — Regulation 126, 126, 137, 137

Citation : (1990) 1 GLJ 129

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : B.K.Goswami, A.K.Goswami, D.N.Barua, P.G.Barua, D.Goswami, R.L.Yadav, R.Barua, Advocates appearing for Parties

Judgement

1. The petitioner at the relevant time was the General Manager, Group "A" gardens Jorhat under opposite party No. 1, a company wherein, it is stated, State of Assam has 99% shares. The opposite party No. 2 is the Managing Director of the said company. Initially the petitioner was appointed as an observer in the year 1973 and thereafter he was appointed as Assistant Manager in the year 1975. In July, 1988 he was promoted to the present post of General Manager, Group "A" gardens of the opposite party No. 1. It is stated that basic salary of the present petitioner is Rs. 2,500/ per month and as such he comes, under category I officer of the Service Regulation framed by the opposite party No. 1 which is known as "Assam Tea Corporation Limited Service Regulations, 1982", for short, "the Regulations". By order dated 17.5.89 the petitioner was placed under suspension pending enquiry into the departmental proceedings initiated against him. The said order is available at Annexure 1 to the petition. The chargesheet was framed on the same date i. e. 17.5.89 vide Annexure 2 to the petition. Being aggrieved, the petitioner filed the Title Suit in question before the learned Munsiff at Gauhati praying, inter alia, for a decree for declaration that the opposite party No. 2 herein i.e. the Managing Director is not competent to place the petitioner under suspension and also issue the charge sheet in view

of provisions of the Regulations. Petitioner also prayed for a declaration that the suspension order and the charge sheet are void, illegal etc. A prayer was made for a temporary injunction restraining the opposite parties herein from implementing the suspension order and conducting the disciplinary proceedings. The learned Munsiff granted an adinterim temporary injunction. Against the said order an appeal was filed before the learned Assistant District Judge No. 1, Gauhati which was allowed by the impugned order and the order of the learned Munsiff was set aside. Hence, the present petition.

2. The petition is resisted by the opposite parties. Though some of the fact, alleged by the petitioner have been denied, I need not state these in details. For the present purpose it would be sufficient to state, that opposite parties have stated that the petitioner was appointed as General Manager, Group A gardens by the Managing Director, i.e. opposite party No. 2 on 30.7.88 and not by the Board of Directors of the .opposite party No 1. According to the opposite, parties on getting some allegations against the petitioner an inquiry was conducted which was placed before the meeting of the Board of Directors on 28. 2. 89 and the Board after due consideration found the report of the enquiry officer unsatisfactory and rejected the same. Board also directed the Managing Director, opposite party. No. .2 to frame charges against the petitioner and draw up departmental proceedings within 15 days. The opposite parties have denied the allegations of the petitioner that the departmental proceeding was initiated by Managing Director, opposite party No. 2 himself. It has "also been denied that the petitioner was appointed as General Manager by the Board of Directors of the opposite party No. 1.

3. Mr. Baruah, learned counsel for the petitioner has urged that in view of the provisions of the Regulations the Managing Director is not competent to initiate the present proceeding and as such it is bad in law. To appreciate the contention of Mr. Baruah, it is necessary to refer to some of the provisions of the Regulations. Regulation 8 of the Regulations has categorised the posts in the Corporation. All posts carrying a pay or scale of pay with maximum of not less than Rs, 1400/ comes under category1. Regulation 20 defines competent authority and under subregulation (ii)of the said Regulation 20 the Board of Directors shall be the competent authority to make appointment of category 1 post upto a maximum pay scale of Rs. 2,250/. Regulation 126 defines Appointing Authority and clause (1) runs as follows :

"(1) Appointing Authority: in relation to an employee means the higher of the following :

(i) the authority empowered to make appointments to the post which the employee for the time being holds. Or

(ii) the authority which appointed the employee to the post which the employee for the time being holds."

According to clause (2) of the said Regulation 126, the Disciplinary Authority in

relation to the imposition of a penalty on an employee, means the authority competent under these Regulations to impose on him that penalty. Regulation 127 defines minor and major penalties. Reading Regulation 128 along with Appendix II. I find for the purpose of category I post, Managing Director is the competent authority to impose minor penalties and Board of Directors for major penalties. Regulation 129 inter alia, provides that the Board or any other authority empowered by it by general or special order may (a) institute disciplinary proceedings against any employee; (b) direct a disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose any of the penalties under the Regulation. This Regulation 129 further provides that a disciplinary authority competent to impose minor penalties may institute disciplinary proceedings against any employee for imposition of major penalties notwithstanding that such disciplinary authority is not competent to impose any such major penalties.

Regulation 137 runs as follows :

"Suspension : 137 (1). The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Board, by general or special order, may place an employee under suspension

(a) Where a disciplinary proceeding against him is contemplated or is pending,

Or

(b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

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(8). Explanation : The suspension of an employee may be made; (i) Where the continuance in office of the Corporation employee will prejudice investigation, trial or, any inquiries e. g. apprehended tempering witnesses or documents.

(ii) Where the continuance in office of the Corporation employee is likely to seriously subvert discipline in the office in which he is working.

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Regulations 138 to 148 provide for appeals, review including procedure.

4. In support of his contention Mr. Baruah has urged that petitioner being category 1 employee, which is not disputed, only the Board of Directors can put him under suspension and initiate the proceeding. Mr. Goswami, learned counsel for the respondents has urged that petitioner was promoted to the category 1 post by the Managing Director and as such the appointing authority was the

Managing Director. Regulation 2:) (1) is clear that Board of Directors is the competent authority to make appointment of category 1 post. Reading Regulation 126 I find force in the contention of Mr. Baruah inasmuch as the Board of Directors is the higher authority as contemplated under the said Regulation. Even if the petitioner was appointed by the Managing Director, the higher authority being the Board of Directors, his case is squarely covered by Regulation 126. In other words, he shall be deemed to have been appointed by the Board of Directors.

5. Annexure A to the counter affidavit filed on 25. 7.89 on behalf of the opposite parties No. 1 and 2 is an extract of the minutes of the meeting of the Board of Directors held on 28.2.89. The Board of Directors by the aforesaid resolution found the report of visiting agent regarding allegations against the present petitioner most unsatisfactory and accordingly it was rejected. The Board authorised the Managing Director to frame charges against the petitioner and draw departmental proceeding within 15 days. Mr. Baruah has contended that as the present suspension order and the departmental proceeding was drawn up on 17. 5. 89 i. e. long after the expiry of 15 days fixed by the Board. The Managing Director had no authority to initiate present proceeding. The time limit fixed by the Board, in my opinion, was for the purpose of early action and it cannot be held that after the expiry of 15 days the Managing Director seized to have any authority. Such a narrow view urged by Mr. Baruah in the type of domestic enquiry cannot be taken. The said resolution of the Board in my opinion gave all the authorities to draw up the present departmental proceeding and it cannot be held to be bad in law only because it was not drawn up within the time limit fixed by the Board.

6. Regulation 137 empowers the authority to place an employee under suspension where a departmental proceeding is contemplated or pending and under Explanation of the subregulation (8) of said Regulation gives guideline for placing an employee for suspension. According to said Explanation suspension of an employee may be made when continuance in office of the Corporation employee may prejudice investigation, trial or inquiry inasmuch as he may temper with witnesses or documents or where continuance of such employee is likely to subvert discipline in the office. This Explanation is very wide and if the authorities are satisfied with the above guideline that a suspension is called for, appropriate orders may be passed. Considering this charges drawn up against the present petitioner, it cannot be held that the suspension order was passed without following the above guideline.

7. The proviso to subregulation (1) of Regulation 137, later alia, provides that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made. Relying on this regulation including the above proviso Mr. Baruah has urged that initiation of the proceeding by the Managing Director is bad and the suspension order cannot sustain as the

Managing Director who is subordinate to the appointing authority, namely, the Board of Directors did not report that the petitioner was placed under suspension. This proviso has been incorporated to safeguard the interest of the employee so that an authority lower than the appointing authority cannot whimsically or without any reason placed an employee under suspension. Such a report regarding of suspension to the appointing authority will enable the appointing authority to apply its mind as to whether the suspension order was warranted and was within the guideline for such suspension. In the case in hand the Board of Director clearly authorised the managing Director .o draw up departmental proceeding. In *R.P. Kapoor vs. Union of India*, AIR 1964 SC 787 it was inter alia, held that suspension pending a departmental proceeding or pending criminal proceeding comes within the words "Disciplinary Matters" as used under Article 314 of the Constitution. Relying on the above observation Mr. Goswami has urged that as the Board of Directors duly authorised the Managing Director to draw up departmental proceeding, he had full authority to suspend the petitioner and it was not necessary to report back to the Board. I find considerable force in the contention of Mr. Goswami inasmuch as the appointing authority of the petitioner by the resolution authorised the Managing Director to take disciplinary action against the petitioner and as such it was not necessary for the Managing Director to report back. It was within the knowledge of the Board of Directors the alleged activities of the petitioner and accordingly Managing Director was authorised to take action. The very fact that the Board refused to accept the inquiry report would show that the Board was well aware of all the allegations against the petitioner. I am therefore, of the opinion that the aforesaid proviso to Regulation 137 is not attracted to the case in hand. I

8. It has been urged by Mr. Goswami that in view of the provisions of section 41 of the Specific Relief Act, 1963, the present suit is not maintainable and as such the injunction order is bad in law. In reply Mr. Baruah has drawn my attention to a decision of this Court in *State of Assam vs. B.D. Patowari*, (1985) 1 GLR 66, wherein, it was held that the order of injunction issued by the trial Court cannot be said without jurisdiction merely because an objection was taken by the defendants to the maintainability of the suit. In view of the above ratio laid down by this Court, I need not enter into this aspect of the matter. I may however add that if according to the opposite parties the suit is not maintainable, the trial Court may be approached to frame a preliminary issue on this point. In this connection, I may however refer that Mr. Goswami has urged that in view of Regulation H9 suspension order is appealable and as such the petitioner ought to have approached the appellate authority and not the civil Court. Mr. Baruah has urged that grievance of the petitioner is against the initial initiation of the entire proceeding which is not appealable. Be that as it may the Regulation does not and cannot bar the jurisdiction of the civil Court. The principle followed by the writ Court that before approaching the Court all the remedies must be exhausted can not be made applicable for a civil suit. Even if there is an appellate forum under the departmental Regulation, the jurisdiction of the civil Court is not

ousted. I am also of the opinion that the proceeding mentioned in clause (h) of section 41 of the Specific Relief Act maybe applicable to a proceeding to a proceeding pending before a domestic enquiry. This is; my tentative view and I keep this matter open to be decided in an appropriate proceeding as on this point learned counsel did not advance any argument. That apart the present petition, as observed above can be disposed of on another ground.

9. Drawing attention to Order 43 Rule 2 and Order 47 Rule 27 Mr. Baruah has urged that the learned trial Court erred in law in relying upon the stay petition supported by an affidavit filed by the present respondents before the learned lower Court inasmuch as it would amount to taking of additional evidence at the appeal stage. I have perused the impugned order and I am satisfied that the learned lower appellate Court did not decide the appeal on the basis of the above stay petition and hence the contention of Mr. Baruah has no force.

10. A point has been taken at the Bar regarding the form of the present injunction, Mr. Goswami has urged that the present injunction granted was in mandatory form which is not permissible without deciding the case. I need not examine this point as I propose to dismiss the present petition on other grounds.

11. For what has been stated above, I hold that the petitioner was deemed to have been appointed by the Board of Directors under Regulation 126, that Board duly empowered under Regulation 129 the Managing Director to initiate the present departmental proceeding and as such it is in accordance with law and that the suspension order was passed by the Managing Director within the provisions as envisaged under Regulation 137.

12. For the reasons stated above, the present petition has no merit and is liable to be dismissed which I hereby do.

In the result, the petition is dismissed, rule is discharged and the interim order stands vacated. No costs.