

(2006) 05 GAU CK 0064
In the Gauhati High Court

Reneishong Serto Kom

APPELLANT

Vs

State of Manipur and Anr.

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Citation : (2006) 05 GAU CK 0064

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : N.Jotendro Singh, Th.Ibohal Singh, Advocates appearing for Parties

Judgement

1. Heard Mr. N. Jotendro Singh, learned counsel appearing on behalf of the petitioner as well as Mr. Th. Ibohal Singh, learned G.A. appearing for all the respondents.
2. This writ petition relates with the prolong suspension of the writ petitioner from service for more than 5 years without initiating any departmental enquiry or/ disciplinary proceedings against him.
3. This writ petition was filed on 23.2.2006 and when it was moved on 1.3.2006 this court granted 3(three) weeks" time to the respondents to file their affidavitinopposition. Again, this court on 27.04.2006 passed an order that as agreed by both the parties, list this case as a fixed item on 11.5.2006. Accordingly this case is listed today, i.e. 11.5.2006, for hearing at the order stage. But unfortunately affidavitinopposition on behalf of the respondents has not yet filed.
4. Neglecting all the details but the precise facts which give rise to the filing of the present writ petition is that the petitioner was initially appointed as a Teacher of the Khongnangpokpi U.J.B. School under an order of the Dy. Inspector of Schools (IE), Govt. of Manipur dated 5th February, 1967 and by an order of the Director of Education(S), Govt. of Manipur dated 5th June, 1967 he was declared as Teacherincharge in respect of Khongnangpokpi U.J.B. School. Under an order of the Director of Education(S), Govt.of Manipur, on the recommendation of the

duly constituted DPC, the petitioner was appointed by promotion to the post of Assistant Inspector of Schools. By an order of the Government of Manipur being No.12/7/93SE(H/S), dated Imphal the 4th February, 1995 the petitioner was appointed on regular basis to the post of Dy. Inspector of Schools. By an order of the Govt. of Manipur dated 1.4.1999, the petitioner was allowed to work as Z.E.O.Jt. Director(Guidance) of Education(S) on look after basis. While the petitioner was serving as Z.E.O.Jt. Director (Guidance) of the Education (S), Govt. of Manipur, he was placed under suspension on the alleged charge of irregular withdrawal of fund and fake appointments in the Department of Education(S), Govt.of Manipur and also on the recommendation of the House Committee under order of the Government of Manipur being No.30/10/2000SE(S), Imphal the 14th June, 2000.

5. Admittedly, till today, the charge for holding the departmental enquiry against the petitioner has not been framed and such being the situation the departmental enquiry against the petitioner has not yet started. The learned counsel appearing for the petitioner has referred to the order No.MHA OM NO.221/18/65AVD dated 7.9.1965 wherein it is stated that in the case of officers under suspension, investigation should be completed and charge sheet filed in the court of competent jurisdiction in the cases of prosecution or served on the officers in the case of Departmental Proceedings within six months as a rule. If the investigation is not likely to be completed in time, it should be considered whether the suspension order should be revoked or officer should resume duty. However, presence of the officer is considered detrimental to the collection of the evidence etc. and also if he is likely to be tampered with the evidence, he may be transferred. He also referred to another OM, i.e. OM No.39/33/72 Estt (A) dated the 16th December, 1972 wherein the said period of six months for submitting charge sheet in the earlier office memorandum dated 7.9.1965 had been reduced to only three months. Learned counsel for the petitioner has also referred to the decision of the Apex court in P.L. Sahavrs Union of India & Ors: (1989) 1 SCC 546 wherein the Apex Court held that the order of suspension is not an order imposing punishment on a person found to have been guilty and it is a policy made against him before found guilty to ensure smooth disposal of the proceedings initiated against him and as such, the proceedings should be completed expeditiously in the public interest and also in the interest of the Government servant concerned.

6. It is now fairly well settled that long continuation of suspension pending departmental enquiry is punitive and affects means of livelihood of the suspended employee. Ref: AIR 1987 (4) SCC 328. Mr. Th. Ibohal Singh, learned G.A. appearing for the respondents has relied a number of authorities, such as:

1) Secretary to Govt. and Anr. vrs K. Muniappan: (1997) 4 SCC 255;

2) Allahabad Bank & Anr. vrs Deepak Kumar Bhola: (1997) 4 SCC 1;

By relying on the decisions of the Apex Court in Secretary to Govt. & Anr.

(Supra) and Allahabad Bank & Anr.(Supra), the learned G.A. submits that prolong suspension is not the sole criteria for interfering with the suspension order and also he further asserted that prolong suspension based on certain factors and also if the delinquent is involved in the serious criminal cases there the concerned authority may not be able to complete of the departmental enquiry as expeditiously as possible.

7. To the contrary, the learned counsel appearing for the petitioner submits that in the present case the petitioner is not involved in the criminal case. But the only submission of the learned counsel for the petitioner is that the factors to be taken into consideration in interfering with the suspension order on the ground of long continuation of suspension would be depend upon the explanations made by the concerned authority regarding the delay in initiating the disciplinary proceedings and completing the same. In this regard, the learned counsel appearing for the petitioner has placed the decision of the Apex Court in State of A.P. vrs N. Radhakishan: (1998) 4 SCC 154. In that case, the Apex Court held that the court has to strike the balance between two diverse considerations, i.e. the delay cause prejudice to the charge officer and explanation for the delay in conducting the disciplinary proceedings. In the present case, it has been seen the petitioner has been placed under suspension for more than 5 years but from the materials available on the record there is no proper explanation as to why there is such a long and continuous suspension for a period near about 5 years. Over and above, admittedly, charge has not yet been framed for initiating the departmental enquiry against the petitioner. The Apex Court in Food Corporation of India and Anr. vrs V.P. Bhatia :(1989) 9 SCC 131 held that the court should insist the disciplinary proceedings shall be initiated and completed as expeditiously as possible. This court in Kamal Kumar Dutta vrs State of Assam & Ors: 2005(1)GLT 167 held that it is the bounden duty of the concerned authority to undertake periodical review of the order of the suspension, i.e. the authority is required to review the situation and consider whether continuation of suspension is necessary keeping in view of the nature of allegation of misconduct, the period on which the officer is under suspension, whether there is any scope for interference by the officer . In the present case in hand it appears that the concerned authority has utterly failed to discharge its bounden duty of periodical review of the order of the suspension as to whether the petitioner is required to be placed under suspension or not. The learned counsel appearing for the petitioner also submits that the petitioner had already attained the age of superannuation in the month of September, 2005.

8. Taking into consideration of the case of the present writ petition and also keeping in view of the decision of the Apex Court, this court is of the considered view that interference to the suspension order dated 14.6.2000 is called for. Accordingly, the suspension order dated 14.6.2000 is hereby quashed. However, there is no bar to the concerned authority of the State Government to take appropriate steps against the petitioner in respect of the pending proceedings for the alleged charge of irregular appointment and missappropriation of fund.

9. With the above observation and direction, this writ petition is allowed. No costs.