
(1999) 04 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (C) No 39 of 1998

Sailova Sailo and Another

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1999) 2 GLT 469

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : George Raju, for the Appellant; N. Sailo, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—The writ Petitioners, namely Mr. Sailova Sailo and Mr. K. Lalrinpuina working as Assistant Sub-Inspector of Police at the relevant time have been dismissed from service by the Superintendent of Police, Aizawl District in exercise of powers under Article 311(2)(b) of the Constitution of India holding that a regular departmental proceeding was not possible under the given circumstances of the case. Being aggrieved with thereby, the writ Petitioners have challenged the aforesaid order praying for quashing of the order of dismissal, reinstatement and other service benefits.

2. Mr. George Raju, learned Counsel appearing for the writ Petitioners submitted that situation leading to the dismissal of the two writ Petitioners was not so grave as to invoke the provision of Article 311(2)(b) of Constitution dispensing with the disciplinary proceedings under the Service Rules. He has also placed reliance on Union of India and Another Vs. Tulsiram Patel and Others, , Chief Security Officer and Others Vs. Singasan Rabi Das, , Bishan Singh and others Vs. State of Punjab and another, and Jaswant Singh Vs. State of Punjab and others, . The Learned Govt. Advocate was directed by this Court to produce the relevant file in order to allow this Court to examine the materials which impelled the disciplinary authority to dispense with the initiation of the disciplinary proceedings under the

Service Law. The learned Govt. Advocate has produced the report submitted by the DySP(DSB) to the Superintendent of Police and a newspaper cutting along with the impugned order passed by the Superintendent of Police.

3. Before we refer to the case law cited by Mr. George Raju, it is considered necessary to examine the background which prompted the Superintendent of Police to issue an order of dismissal. The report submitted by the DySP(DSB) shows that the writ Petitioners displayed black badges to show their grievances and discontentment. Except this overt manifestation, there is nothing in this report to show that they have indulged in any other activities disrupting the services of the department. In his report, the DySP(DSB) has stated that he has briefly explained to the writ Petitioners that in a police force, strike of any kind is against law. But this document or the order passed by the S.P. do not in any form suggest that the writ Petitioners and under their leadership other officers went on strike or even decided to go on strike. The paper cutting only shows that a news item was published by a local daily to the effect that the employees in the prosecution Branch are not willing to work under the concerned DySP.

4. The report published in the newspaper do not show that it was published as per request of the writ Petitioners. The report itself do not show that the officers of the prosecution Branch under leadership of the writ Petitioners were planning to go on strike. There is also nothing on record to show that this newspaper item was initiated by either of the writ Petitioners.

5. The offence alleged to have been committed by the writ Petitioners have been reflected above. Now the question arises for determination by this Court is whether the conduct of the writ Petitioners in wearing black badges and the report published in the local daily constitute a grave and serious situation warranting dispensation of departmental proceedings under provisions of Article 311(2), proviso (b) of the Constitution.

6. The Superintendent of Police in the impugned order dated 10.8.1998, issued after about seven days from the day of alleged strike, mentions of wearing of black badges and publication of a news item only. The order does not show that nothing else was indulged in by the writ Petitioners to the prejudice of the police administration in the District. In my opinion, both the writ Petitioners could have been well proceeded against under the provisions of the Service Rules by initiating regular departmental proceedings.

7. In para-4 of the judgment delivered by the Apex Court in Bishan Singh and others Vs. State of Punjab and another, even in more serious circumstances, it has been held that the writ Petitioners of that case did not commit any misconduct warranting extreme penalty of dismissal from service. In Jaswant Singh Vs. State of Punjab and others, the Apex Court while dealing with a case of dismissal under Article 311(2), proviso(b) held as follows:

5...This is more than a mere reproduction of paragraph 3 of the impugned order. Our attention was not drawn to any material existing on the date of the

impugned order in support of the allegation contained in paragraph 3 thereof that the Appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt was made. It was incumbent on the Respondents to disclose to the court the material in existence at the date of passing of the impugned order in support of the subjective satisfaction recorded by Respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of *Tulsiram* case (SCC p. 504 para 130).

8. If the factual background of this case is examined in the light of decision in *Bishan Singh and Jaswant Singh* (supra), this Court has no option but to conclude that the satisfaction recorded by the Superintendent of Police in the impugned order dispensing with regular disciplinary proceedings cannot be accepted as valid. The ratio laid down in *Chief Security Officer and Ors. v. Singasan Rabi Das* AIR 1991 (1) SCC 729, if applied in this case, also leads to the same conclusion. The principles embodied in Article 311(2), proviso(b) have been discussed and elucidated in Para-130 of *Union of India and Another Vs. Tulsiram Patel and Others*, . For better appreciation of the matter, the relevant observation made by the Supreme Court is quoted below:

...A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the government servant is weak and must fail.

9. I have given my deep consideration into the matter. The materials on record are not such that a regular departmental proceedings under the service law could have been dispensed with by the Superintendent of Police and the order of dismissal passed invoking the extra-ordinary powers under Article 311(2), proviso (b) of the Constitution.

10. Under the circumstances, the impugned order dated 10.8.1998 cannot but be quashed. Therefore, this writ petition is allowed and the impugned order is hereby quashed. The Respondents are directed to reinstate the Petitioners with all service benefits in accordance with law. However, option shall remain open with the Respondents to proceed against the writ Petitioners in accordance with Service Law, if materials for such step exist.

No order as to costs.