

(2009) 08 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 3617 of 2009

Saru Ram Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 6(2)
Penal Code, 1860 (IPC) — Section 120B
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (2010) 4 GLR 213 : (2010) 1 GLT 614

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.D. Choudhury, P. Deka and P. Sarma, for the Appellant; B.J. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The order dated 17.12.2008 passed by the Inspector General of Prisons, Assam, seeking to treat the subsistence allowance and other allowances paid to the petitioner during the period of his suspension from 30.6.2000 and 21.5.2006 as pay and allowances therefore, and to construe the said period to be on duty for the purpose of pension only, is under challenge in the instant proceeding.

2. I have heard Mr. A.D. Choudhury, Learned Counsel for the petitioner and Mr. B.J. Ghosh, learned State Counsel, Assam for the respondents.

3. Having regard to the pleaded facts and contention raised, this petition is being disposed of at the motion stage.

The petitioner's version is that while he had been serving as Craft-helper (Spinning) being posted at the District Jail, Guwahati, he was falsely implicated in Panbazar P.S. Case No. 181/2000, u/s 120B of the IPC read with Sections 10/13 UA (P) Act and was taken into custody by the police in connection

therewith on 30.6.2000. By order dated 6.7.2000 of the Superintendent, District Jail, Guwahati, he was placed under suspension w.e.f. 30.6.2000. This was pursuant to the order dated 5.7.2000 of the Inspector General of Prison, Assam, under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964 (hereafter for short referred to as the Rules). As neither any departmental proceeding was initiated against the petitioner, thereafter, nor there was any sign of completion of investigation in the police case, he approached this Court with WP(C) No. 8837/2003, assailing the orders of suspension dated 5.7.2000 and 6.7.2000, as above.

4. By order dated 25.2.2005, this Court in the above writ petition directed the respondent authorities to consider the aspect of revocation of his suspension. The petitioner, thereafter, submitted a representation before the concerned respondent authority in terms of the aforementioned order, which was, however, rejected on 25.8.2005, observing, inter alia, that notwithstanding his release on bail, he would continue to remain under suspension till his discharge or acquittal in the criminal case.

Being aggrieved, the petitioner instituted WP(C) No. 7613/2005. Wherein, a Division Bench of this Court vide its order dated 30.3.2006 directed the respondent authorities to revoke the order of suspension Within a period of 2(two) weeks from the date of receipt of the certified copy thereof and to reinstate, the petitioner in service. On a representation being submitted by the petitioner on 8.5.2006 along with a copy of the said order, he was, eventually, reinstated in service w.e.f 22.5.2006. Meanwhile, in view of the delay on the part of the respondent authorities, he had also initiated a contempt proceeding against them. As in spite of his reinstatement, the respondents did neither release his arrear salary for the period of suspension nor determined his entitlements, he submitted a representation on 21.8.2007. Being aggrieved by the inaction of the respondents, still thereafter, the petitioner instituted WP(C) No. 3851/2008. During the pendency of this petition, the order dated 17.12.2008, as alluded hereinabove, was passed and faced with this, the petitioner withdrew the said proceeding to return with this challenge.

5. Mr. Choudhury has urged that the continuation of the order of suspension of the petitioner having been disapproved by a Division Bench of this Court, the revocation thereof signifies that the same had been unjustified and, therefore, the order impugned being in contravention of FR 54-B, as applicable to him, it is liable to be interfered with. As, till date neither any departmental proceeding had been initiated against the petitioner, nor the charge in the criminal case has been proved against him, his suspension by no means can be construed to be justified and, therefore, the impugned decision ought to be adjudged illegal and unconstitutional, he urged. The Learned Counsel maintained that in the facts and circumstances of the case, the suspension of the petitioner being apparently unjustified, in terms of Sub-rule 3 and 4 of FR 54-B, he is entitled to full pay and allowances for the period of suspension, which also ought to be treated as one

spent on duty for all purposes. To bolster his contentions, Mr. Choudhury, has placed reliance on the judgment and order dated 21.11.2008 passed by this Court in WP(C) No. 7563/2002 (Md. Azad Hussain Mandal v. The State of Assam and Ors.).

6. In reply, Mr. Ghosh, has argued that the petitioner's suspension being under Rule 6(2) of the Rules, the impugned order, which is obviously subject to the outcome in the criminal case, is unassailable in law and, therefore, the plea to the contrary based on FR 54-B is misplaced.

7. The facts averred and the arguments advanced have been duly taken note of. There is no dissension at the Bar that the suspension of the petitioner was effected in exercise of power under Rule 6(2) of the Rules, where under, a government servant who is detained in custody on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention.

A bare reading of the order dated 30.3.2006 passed by the Division Bench of this Court in WP(C) No. 7613/2003 demonstrates that the only reason for disapproving the continuance of the order of suspension was the undue delay involved. This Court inter alia, noticed that though the order of suspension was passed on 5.7.2000 and 6.7.2000, neither any disciplinary action had been initiated against the petitioner nor any charge sheet in the criminal case laid. While noticing that an order of suspension passed under Rule 6(2) of the Rules, is normally co-terminus with the pendency of the criminal case, it was observed that in the facts and circumstances of the case, in view of the delay involved, the petitioner could not be kept under suspension any further. The respondents were, in the above premise, directed to revoke the order of suspension within a period of 2(two) weeks and to reinstate the petitioner in service. The respondents, however, were left at liberty to initiate disciplinary proceeding against him, if so advised.

8. Having regard to the pith of the above order of this Court, the plea that the same connotes a determination that the suspension of the petitioner had been unjustified, does not commend for acceptance. As the interference with the continuance of the order of suspension was passed wholly on the consideration of delay and nothing further, the order of the Division Bench of this Court cannot by any means be construed to be a decision signifying that the order of suspension was held to be unjustified attracting consequential reliefs as contemplated in FR 54-B, as claimed by the petitioner.

9. Apart from the fact that the petitioner in Md. Azad Hussain Mandal (supra), had not been suspended under Rule 6(2) of the Rules on the ground of his detention on a criminal charge and that, therefore, the factors noted therein, are of no avail in the case in hand, the order impugned, on the face of it, proclaims that the decision embodied therein is not final, but is subject to review after the disposal of the criminal case, in which the petitioner is involved and not yet

exonerated of the charge. His contention based on wrong application of FR 54-B in the facts and circumstances of the case on the supposition that the purport of the verdict of the Division Bench is that his suspension was unjustified and that the impugned order pertains to finally deciding his service entitlements for the period involved cannot be sustained. In this view of the matter, dilation on the purport of various clauses of FR 54-B is considered inessential. The respondents, however, would cause necessary steps to be taken to expedite the completion of the investigation and trial of the criminal case.

On a totality of the considerations as hereinabove, in the estimate of this Court, no interference with the order impugned at this stage, is called for. The petition is, thus, dismissed. No costs.