
(2016) 05 GAU CK 0052
In the Gauhati High Court
Case No : W.P (C) No. 67 of 2014

Sh. C. Lalzarliana

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Citation : (2017) 1 GauLR 736 : (2016) 3 GauLT 739

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. Nelson Sailo, Senior Advocate, Mrs. Dinari T. Azyu, Mr. Victor L. Ralte, Mr. Vanhmingliani and Ms. K. Roland, Advocates, for the Appellant; Ms. Melody L. Paachuau, GA, for the Respondent

Final Decision : Allowed

Judgement

Michael Zothankhuma, J.—Heard Mr. Nelson Sailo, learned senior counsel assisted by Ms. Vanhmingliani, learned counsel appearing for the petitioner. Also heard Ms. Melody L. Pachau, learned Govt. Advocate appearing for the State respondents.

2. The petitioner's counsel submits that the petitioner was appointed to the post of Administrative Officer (Non-Gazetted) under the Govt. of Mizoram on 17.10.1980. The petitioner was thereafter appointed to the Junior Grade of the Mizoram Civil Service on 21.06.1999 and served as Block Development Officer (BDO) at Lunglei from 25.01.2000.

3. That while functioning as BDO, Lunglei. Rs. 6 Lakhs (Rupees Six Lakhs) had been sanctioned on 03.04.2000 for construction of Zobawk Community Hall. On 01.08.2000 Sh. H. Laltlanzaauva, the then Chairman of Zobawk Community Hall Committee withdrew Rs. 2 Lakhs (Rupees Two Lakhs) from the BDO, Lunglei. Thereafter, another Rs. 2 Lakhs (Rupees Two Lakhs) was withdrawn on 23.02.2001 from the BDO, Lunglei. The above money was spent for construction of the hall.

4. That out of the said amount of Rs. 6 Lakhs (Rupees six lakhs), the balance Rs. 2 Lakhs (Rupees Two Lakhs) was to be released on satisfactory completion of the ongoing construction work after spot verification. However, since the Rural Development Department insisted for utilisation certificate for settlement of the sanctioned amount, Mr. H. Laltlanzauva signed the APR for the remaining Rs. 2 Lakhs (Rupees Two Lakhs) on 26.02.2001, which was not actually released pending satisfactory" progress of the work done, that upon investigation and verification of the work on 28.03.2001, the petitioner informed Mr. H. Laltlanzauva vide letter dated 29.03.2001 that the balance amount of Rs. 2 Lakhs (Rupees Two Lakhs) could be collected from his office during office hours, the petitioner was thereafter transferred out in the year 2001 itself. However he later came to learn that Mr. H. Laltlanzauva did not receive the said letter and accordingly did not collect the remaining balance of Rs. 2 Lakhs (Rupees Two Lakhs).

5. The petitioner"s counsel submits that subsequently, as the outstanding amount of" Rs. 2 Lakhs (Rupees Two Lakhs) had no been received for construction of the Zobawk Community Hall, a complaint dated 09.9.07 was submitted by Zopui Adventure Club regarding non-payment of Rs. 2 Lakhs (Rupee Two Lakhs)out of the sanctioned Rs. 6 Lakh (Rupees six lakhs).

6. In pursuance to the complaint submitted by Zopui Adventure Club, the Anti-Corruption Branch, Mizoram Police conducted an enquiry and as per the enquiry" report dated 14.11.2007. the BDO, Lunglei (petitioner) had drawn the remaining Rs. 2 Lakhs (Rupees Two Lakhs) by forging signature of H. Laltlan-zauva (Chairman of Zobawk Community Hall Committee) in the APR receipt No. 22 dated 26.02.2001. The enquiry report also stated that the petitioner, who was the erstwhile BDO. Lunglei at the relevant time sent Bank draft No. 617688 dated 29.10.07 amounting to Rs. 2 Lakhs (Rupees Two Lakhs)to the incumbent BSO, Lunglei by speed post to cover the short fall of Rs. 2 Lakhs (Rupees Two Lakhs) out of Rs. 6 lakhs (rupees six lakhs). On 01.11.2007, the incumbent BDO. Lunglei handed over Rs. 1.95,000/- out of the Rs. 2 lakhs to the Vice Chairman, Zobawk Community Hall Committee. as the Rs. 5,000 out of Rs. 2 Lakhs (Rupees Two Lakhs) sent by the petitioner by Bank draft had been deducted for opening an account in the SBI, Lunglei. The enquiry report dated 14.01.2007 held that the missing Rs. 2 Lakhs (Rupees Two Lakhs) had been misappropriated by the petitioner and that Sh. H. Laltlan-zauva (erstwhile Chairman of Zobawk Community Hall Committee) was not involved in the misappropriation.

7. Thereafter, the Inspector, Anti-Corruption Branch, Mizoram wrote a letter to the SP. Anti-Corruption Branch to register a criminal case against the petitioner.

8. The Zopui Adventure Club thereafter, wrote a letter dated 29.08.2008 to the Chief Vigilance Officer, Mizoram stating that as the petitioner had deposited the remaining balance of Rs. 2 Lakhs (Rupees Two Lakhs)by way of Bank draft for the ongoing construction of the hall, they no longer wanted to proceed with the case regarding the hall and requested that they may be allowed to withdraw the

F.I.R filed by them. The Zopui Adventure Club in their letter dated 29.08.2008 also stated that the remaining balance of Rs. 2 Lakhs (Rupees Two Lakhs) was to have been withdrawn by Mr. H. Laltlanzaauva, Chairman of Zobawk Community Hall Committee. However, the letter sent by the petitioner to Mr. H. Laltlanzaauva to Like the balance of Rs. 2 Lakhs (Rupees Two Lakhs) had never reached Mr. H. Laltlanzaauva, That is why the remaining Rs. 2 Lakhs (Rupees Two Lakhs) had not been withdrawn by the Chairman of the Zobawk Community Hall Committee.

9. The petitioner's counsel submits that as there was no misappropriation of the money by the petitioner, the matter should have ended there. However, not only was a criminal case, namely Crl. Tr. No. 1430/2010 under Section 406/409/468/34 IPC read with Section 13(2) PC Act. 1988 initiated against the petitioner, but also Disciplinary proceedings were initiated against the petitioner vide memorandum of charge dated 24.09.2010 for misappropriation of Rs. 2 lakhs through forgery.

10. The petitioner was acquitted by the Special Court, PC Act, Aizawl in Crl. Tr No. 1430/2010 vide Judgment & Order dated 25.10.2013. However, in the Disciplinary proceedings initiated against the petitioner, the Disciplinary authority agreed with the findings of the enquiry officer and found the petitioner guilty of the charge framed against him and accordingly, major penalty of reduction to lower stage in the time scale of pay for a period of 1 year with immediate effect was imposed upon the petitioner. Also during the said period, the petitioner would not earn increment of pay but the reduction will not have the effect of postponing future increments of his pay was imposed vide order dated 05.02.2014.

11. The petitioner filed Revision petition dated 11.03.2014 under Rule 26 of the CCS (CCA) Rules, 1965 against the penalty imposed upon him by the impugned order dated 05.02.2014. The same was rejected by the respondents vide letter dated 20.06.2014.

12. The petitioner has thus approached this Court by way of the present writ petition on the ground that the petitioner had never misappropriated the balance of Rs. 2 Lakhs (Rupees Two Lakhs). It was due to the fact the erstwhile Chairman of the Zobawk Community Hall Committee, not having received the letter dated 20.09.2001, that the money had not been withdrawn by Mr. H. Laltlanzaauva. The petitioner's counsel also submits that in any event, the Rs. 2 Lakhs (Rupees Two Lakhs) had been paid by the petitioner from his own account through a Bank draft dated 29.10.2007. The petitioner's counsel also submits that the evidence in the Criminal Trial in para 63 of the Judgment & Order 25.10.2013 passed in Crl.Tr No. 1430/2010 shows that when Mr. H. Laltlanzaauva went to collect the balance Rs. 2 lakhs later, after coming to know of the petitioner's letter asking him to collect the balance Rs. 2 lakhs, the Rs. 2 Lakhs (Rupees Two Lakhs), which was to be paid to Mr. H. Laltlanzaauva could not be paid as the same has been utilised for entertaining V.I.Ps and other guest who visited the Lunglei Rural Development Block. Also, the evidence in the Criminal Trial showed that the

accused did not take the Rs. 2 Lakhs (Rupees Two Lakhs) or misused the same as per the evidence given by Mr. H. Laltlanzaauva, erstwhile Chairman of the Zobawk Community Hall Committee. The petitioner's counsel also submits that the penalty of reduction to lower stage in the time scale of pay for a period of 1 year is a minor penalty and not a major penalty. The petitioner's counsel thus submits that in view of the penalty being a minor penalty, the respondents, before imposition of the minor penalty, have to first inform the Government servant in writing of the proposal to take action against him and of the imputation of misconduct on which it is proposed to be taken, by giving him reasonable opportunity of making such representation as he may wish to make against the proposal as required by Rule 16 of the CCS/CCA Rules, 1965. The petitioner's counsel submits that no such notice was given to the petitioner.

13. The petitioner's counsel submits that the disciplinary proceeding initiated against the petitioner was basically to the effect that the petitioner had committed forgery while misappropriating money. The petitioner's counsel submits that as the enquiry report does not make any mention of the petitioner having committed forgery, the disciplinary proceeding could not have ended with the finding of guilt against the petitioner, as the very basis for the disciplinary proceeding had been extinguished.

14. The petitioner's counsel also submits that the criminal proceeding, that the Criminal Trial No. 1430/2010 was disposed of by the Special Court (PC Act), Aizawl vide judgment and order dated 25.10.2013 by way of acquittal, after taking into consideration the entire available evidence placed before it. The petitioner's counsel submits that the petitioner's acquittal by the Criminal Court ill has to be deemed to be an honourable acquittal and as the facts and evidence in both the proceedings, namely departmental proceeding and the criminal case were based on identical facts and evidence, the petitioner could not have been found guilty in the discipline proceeding. In support of his submission, the petitioner's counsel has relied upon the judgment of the Apex Court in the case G.M. Tank v. State of Gujarat & Ors. reported in (2006) 5 SCC 446.

15. The petitioner's counsel also submits that the rejection of the petitioner's revision being cryptic, the rejection of the petitioner's revision petition has to be set aside.

16. Ms. Melody L. Pachuau, Government Advocate for the respondents submits that the penalty inflicted upon the petitioner is not a minor penalty and the same is a major penalty. As such, no notice is required to be given to the petitioner as per Rule 15(4) of the CCS (CCA) Rules and as per the proviso to Article 311 (2) of the Constitution.

17. The respondents counsel submits that acquittal of the petitioner in the criminal case does not mean that the petitioner can be reinstated to service, as the Mizoram Civil Service Rules does not contain a provision for reinstatement of an employee who has been acquitted in a criminal proceeding. In this regard. the

respondents" counsel has relied upon the judgment of Deputy Inspector General of Police & Anr. v. S. Samuthiram reported in (2013) 1 SCC 598. The respondents" counsel has also submitted that in the case of Deputy Inspector General of Police (Supra), the Apex Court has also held that even if a person was honourably acquitted by the criminal Court, he is not entitled to claim reinstatement unless the service rules provides for the same.

18. The respondents? counsel also submits that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority and in this respect, the learned counsel has relied upon the judgment of the Apex Court in Southern Railway Officers Association & Anr v. Union of India reported in (2009) 9 SCC 29.

19. The respondents counsel also submits that the facts as relied by the petitioner"s counsel shows that the petitioner was guilty of misappropriation and accordingly, the impugned order dated 5.2.2012 should be upheld.

20. I have heard the counsels for the parties.

21. In the case of the B.C. Chaturvedi v. Union of India reported in (1905) 6 SCC 749. the Apex Court has held that the Disciplinary authority is the sole Judge of facts. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. In the case of Union of India v. H.C. Goel reported in AIR (1964) SC 364, the Apex Court has held that a writ of certiorari could be issued if the conclusion reached by the Disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all.

In the case in hand, the petitioner had given Rs. 4 lakhs out of Rs. 2 lakhs to the Zobawk Community Hall Committee prior to his transfer in 2001. However, the petitioner has given the balance Rs. 2 lakhs from his own account in the year 2007 by way of a Bank draft. The petitioner in his statement of defense dated 02.10.2010 against the memorandum of charge has stated as follows:

"That I had no intention to misappropriate the said Govt. Money. I rather released the full amount of Rs. 6.00 lakhs for the construction of Zobawk Community Hall. However, I apologize for the delay in payment of final instalment of Rs. 2.00 lakhs which was caused due to my Said transfer as stated above. In this connection, I would like to further state that while I was functioning in my capacity as B.D.O Lunglei. I had to spend a lot of money for entertainment of VIP?s who had visited Lunglei and other stations within the Lunglei R.D. Block. This had caused unofficial expenditure to the tune of Rs. 2,13,000 which was properly recorded by me. The detailed statement of accounts is enclosed herewith for your kind perusal.

In view of the above, I would like to further state that the amount of Rs. 2 lakhs by Bank Draft dated 28.09.2007 was not from the amount sanctioned by the

Govt, for the said construction but from my own resource which I had procured by obtaining a housing loan from the S.B.I Dawrpui Branch Aizawl. I may be allowed to submit necessary statement of my loan accounts subsequently. "

22. The above admission of the petitioner is to the effect that the petitioner had utilised Rs.2,13,000/- for entertainment of VIPs. However. the Apex Court has held in many cases that the High Court should not act as a Court of appeal and in view of the same, this Court is not going into merits of the case.

23. With regard to the question of whether the Disciplinary authority should have found the petitioner as "not guilty" due to his acquittal in the criminal case, the Apex Court in the case of Southern Railway Officers Assn. v. Union of India reported in 2009 (9) SCC 29 has held that it is a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.

In the case of Deputy Inspector General of Police & Anr. v. S. Samuthiram reported in (2013) 1 SCC 598, the Apex Court has held at para 26 as follows:

"26 ... in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent, it is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceeding", and preponderance of probabilities is sufficient There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

24. In the present case, para 63 of the Judgment & Order dated 25.10.2013 passed in the Criminal Trial No. 1430/2010 is to the effect that Mr. H. Laltlanzauba, erstwhile Chairman in his cross examination has stated that the petitioner had informed him to receive Rs. 2 lakhs on 29.03.2001. However, he did not receive the letter sent by the petitioner, as his relative received had kept the same in a file. When he saw the letter after a long lapse of time, he went to the BDO and met the Cashier and requested him to release the Rs. 2 lakhs which was sanctioned for the construction of Community Hall and the Cashier told him that the petitioner had already been transferred and they did not have sufficient

money to pay to him. Further, the Cashier told him that the money which was meant for payment to the Chairman was utilised for the purpose of entertaining VIP and other guest and would be paid as soon as they got fund and he also identified the chit sent by appellant.

25. In the case of Lalit Popli v. Canara Bank & Ors. reported in 2003 3 SCC 583. the Apex Court has held at para 17 as follows:

"While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice Judicial review is not akin to adjudication of the case on merits as an appellate authority."

26. The question that has to be decided is whether punishment imposed upon the petitioner is a major penalty or minor penalty. As per Rule 11 (v) of the CCS CCA Rules, major penalty is as follows:

"save as provided for in Clause (iii)(a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay."

The punishment imposed upon the petitioner is:

"Reduction to a lower stage in the time-scale of pay for a period of 1 (one) year with immediate effect. During the said period, he shall not earn increment of pay but the reduction will not have effect of postponing future increment of his pay."

Minor penalty under Rule 11 (iii) of the CCS CCA Rules states as follows:

"reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension."

On reading of the provisions of Rule 11 (iii)(a) & (v) vis-a-vis the penalty imposed upon the petitioner. I hold that the penalty" imposed upon the petitioner is a major penalty and as such Rule 16 of the CCS CCA rules is not applicable, inasmuch as, no notice is required to be given to the petitioner under Rule 16 before imposition of the said penalty. In the present case, the petitioner was given a copy of the enquiry report and the petitioner had submitted his representation against the same. However, sub-rule 3(b) and 3(4) of Rule 15 of the CCS CCA Rules have not been complied with inasmuch as the disciplinary authority has not forwarded a copy of the advise of the Mizoram Public Service Commission regarding the quantum of punishment proposed to be imposed on the petitioner.

27. Reading of the impugned Order dated 5.2.2014 shows that the MPSC had been consulted on the quantum of punishment proposed to be imposed and the

MPSC had conveyed their opinion regarding the same vide letter dated 27.1.2014.

28. In the case of Union of India & Ors. v. R.P. Singh, reported in (2014) 7 SCC 340. the Apex Court has stated that the decision of the Apex Court in S.N. Narula v. Union of India & Ors., reported in (2011) 4 SCC 591 is an authority for the proposition that the advice of the Union Public Service Commission, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of punishment. In the present case, the advice/opinion of the MPSC given vide letter dated 27.1.2014 was not furnished to the petitioner prior to the issuance of the impugned penalty" Order dated 5.2.2014. As the impugned Order dated 5.2.2014 mentioned that the MPSC had been consulted on the quantum of punishment proposed to be imposed and as the MPSC had given their opinion on the same, the opinion of the MPSC has to be taken to be a part of the decision making process of the Disciplinary Authority while imposing the penalty upon the petitioner.

29. In view of the fact that no notice was issued to the petitioner under Rule 15 of the CCS/CCA Rules with regard to the opinion of the MPSC, the impugned Order dated 5.2.2014 cannot withstand the scrutiny of law and the same is set aside. However, the respondent authorities are at liberty to forward the copy of the advice of the MPSC to the petitioner and to allow him to submit a representation against the same. Thereafter, the respondents may issue consequential Order/Orders in pursuance to the disciplinary proceeding initiated against the petitioner. Besides the above, the petitioner's Revision petition has been rejected by the respondents treating the same to be an appeal. The rejection letter dated 20.06.2014 is cryptic and is benefit of all reasons. It is settled law that all administrative action must be informed by reason. In view of the above and in view of the fact that the primary impugned order dated 05.02.2011 has been set aside, the letter dated 20.6.2014 (Annexure-15) issued by the Under Secretary, Government of Mizoram, DP & AR (CS W) is also set aside.

30. Accordingly, the present writ petition is allowed.