
(2009) 01 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 3546 of 2008

Shri Bharat Baruah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7

Citation : (2009) 1 GLD 294

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : B.D. Goswami, B. Buragohain and R. Borah, for the Appellant; M. Barua, SC, Education Deptt., for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. B.D. Goswami, learned Counsel for the Petitioner and also Mrs. M. Barua, learned standing counsel, Education Department.

2. The Petitioner in this writ proceeding challenges the order dated 13.1.2005 (Annexure-6) whereby he was placed under suspension w.e.f. 13.1.2005 and prays for issuance of a direction to the Respondent authorities to consider and dispose of the representations dated 30.11.2005 and 17.5.2008 submitted by him.

3. The Petitioner has been serving as Upper Division Assistant in the Office of the District Elementary Education Officer, Sibsagar and he was dealing with the matters connected with transfer and posting of the teachers. While he was serving so one Smt. Mousumi Gogoi (Handique), Asstt. Teacher, Mohan Barua Primary School, Amguri Block, Sibsagar made a complaint on 10.1.2005 before the Deputy Commissioner, Sibsagar District against the Petitioner that the Petitioner demanded Rs. 10,000/- from her. The Deputy Commissioner deputed one Mr. A. Bharali, ACS, Executive Magistrate, Sibsagar on 11.1.2005 to enquire about the same and after searching the body of the Petitioner, the police party

who accompanied the said Magistrate, recovered one envelop containing some cash amounts from his pocket. The said Magistrate lodged an FIR with the Officer-in-charge, Sibsagar Police Station on the basis of which a police case namely, Sibsagar RS. Case No. 15/05 u/s 7 of Prevention of Corruption Act, 1988 was registered. On the basis of this complaint the Petitioner was arrested and released on bail later on. The Petitioner was placed under suspension with immediate effect. The Respondent authorities issued show cause notice on 7.5.2005 (Annexure-8). The Petitioner replied to the show cause notice vide his letter dated 20.5.2005. The Respondent authorities did not consider the aforesaid reply to show cause and no order has been passed as yet. The departmental authorities without replying to the show cause reply initiated a departmental proceeding against the Petitioner.

4. Mr. Goswami, learned Counsel for the Petitioner submits that till now no Enquiry Officer and Presenting Officer have been appointed and no information has been received by the Petitioner from the Respondent authorities whether the departmental proceeding contemplated against the Petitioner would continue. At this stage, Mr. Goswami, learned Counsel for the Petitioner fairly submits that the authorities concerned may continue with the departmental proceeding to enquire into the alleged misconduct against the Petitioner but he may be reinstated in his post inasmuch as the contemplated departmental proceeding, although claimed to have been initiated, is yet to be commenced.

5. Mrs. Barua, learned standing counsel, Education Department has placed before this Court a letter bearing No. EHA-158/2008/45, dated 8.12.2008 issued by the Director-in-charge, Elementary Education, Assam addressed to the District Elementary Education Officer, Sibsagar, by which the aforesaid District Elementary Education Officer has been asked to complete the departmental proceeding, if not already completed, by appointing an Enquiry Officer and submit the finding of the departmental proceeding to the Office of the Director, Elementary Education, Assam. In the said letter the District Elementary Education Officer was directed to obtain the present status of the criminal proceeding connected with Sibsagar P.S. Case No. 15/05 (G.R. Case No. 38/2005). The position is made clear in regard to the departmental proceeding in the first paragraph of the aforesaid letter which is quoted below:

With reference to the subject cited above, I am to say that Shri Bharat Baruah, UDA, Office of the DEEO, Sibsagar was placed under suspension w.e.f. 13.1.2005 from your end vide your letter No. EE/EST/SIB/SUS/05/5840 dated 13.1.2005. As per averment of the writ petition the departmental proceeding was initiated against the Petitioner and reply of the show cause has also been submitted by the Petitioner. But no information/report has yet been received from your end regarding completion of the departmental proceeding.

Mrs. Barua, learned standing counsel on the basis of the aforesaid instruction made a prayer that the matter may be adjourned to enable her to obtain further instructions.

6. Mr. Goswami, learned Counsel for the Petitioner submits that no charge sheet has been filed against the Petitioner in the criminal case referred to earlier. He also submits that the departmental proceeding has not yet been proceeded inasmuch as no Enquiry Officer and Presenting Officer have been appointed so far. In view of the above, according to Mr. Goswami, learned Counsel the impugned suspension order should be revoked with a direction to reinstate the Petitioner.

7. In support of his submissions, Mr. Goswami places reliance on the decisions rendered by this Court in *Jinna Abdur Rahim v. State of Assam* reported in 2002 (3) GLT 497, *Apurba Kr. Borthakur v. State of Assam and Ors.* reported in 2006 GLT 814. He also places reliance on the decision rendered by the Apex Court in *K. Sukhendar Reddy v. State of Andhra Pradesh* reported in (1992) 6 SCC 257. In *Apurba Kr. Borthakur*, (supra), this Court has held that the suspension cannot be resorted to as a routine measure and the delay of five years in completing the enquiry displays lack of concern of the authorities and in such cases the suspension order is liable to be set aside followed by reinstatement of the delinquent officer.

8. The settled position of law is that the suspension from service is a very serious matter and it should be for a minimum period because a prolonged suspension without any justifying cause is not only wastage of human resources but also of material resources of the organisation, which has to pay the subsistence allowance etc. without any return. This has been held so by a Division Bench of this Court in *Md. Sahabuddin v. State of Assam* reported in (1990) 1 GLR 276.

9. Taking into consideration the entire facts and circumstances of the case, particularly, the prolonged suspension of the Petitioner since 13.1.2005 for an indefinite period without any sign of progress in the contemplated departmental proceeding, I do not consider it appropriate to allow the Respondent authorities to place the Petitioner under suspension for any further period without any return and accordingly the impugned order dated 13.1.2005, by which the Petitioner was placed under suspension, is set aside with a direction to the Respondent authorities to reinstate the Petitioner in service, preferably within a period of 14 days from the date on which the Petitioner would furnish a certified copy of this order to the Respondents No. 3 and 4. Be it made clear that the Respondent authorities are not debarred from proceeding with and completing the departmental proceeding, if they have already started against the Petitioner in accordance with law.

The petition stands disposed of accordingly.