

(2010) 12 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (C) No. 80 of 2010

Shri H. Lalengmawia, MCS, Joint Director (Admn), Urban
Development and Poverty Alleviation Department

APPELLANT

Vs

The State of Mizoram

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 29
Constitution of India, 1950 — Article 226

Citation : (2010) 12 GAU CK 0022

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : M. Zothankhuma, for the Appellant; Aldrin Lallawmzuala, Addl. A.G.,
for the Respondent

Final Decision : Allowed

Judgement

H. Baruah, J.—Heard Mr. Michael Zothankhuma, learned Senior Advocate assisted by Ms. D. Lalrinchhani, appearing for and behalf of the Petitioner. Also heard Mr. Aldrin Lallawmzuala, learned Addl. A.G., Mizoram for the State Respondents.

2. As agreed to by the learned Counsel for the parties, this matter is taken for disposal at the admission stage.

3. By this writ petition under Article 226 of the Constitution of India, the Petitioner prays for setting aside and quashing of the order dated 10.8.2010 issued by the Additional Secretary to the Government of Mizoram vide Memo No. 19014/91/91 - PERS (CSW) dated 10.8.2010 wherein it has been clarified that the effective date of the revocation of the penalty of "censure" shall be on and from the date of order i.e. 19.7.2010.

4. On account of alleged misappropriation of Government money amounting to Rs. 3,29,359/-, the Petitioner was suspended in the year 1995 and proposed to hold a departmental enquiry against him while the Petitioner was functioning as

Block Development Officer, Zawlnuam. Departmental Enquiry was conducted and report submitted on 8.7.1996 holding that the charges alleged against him (the Petitioner) could not have been proved. The disciplinary authority being not satisfied with the enquiry report submitted by the enquiry officer remitted back the same to the enquiry authority for further enquiry by the order dated 14.7.1997. The enquiry officer conducted further enquiry of the case and submitted his second enquiry report on 14.12.1997. The Petitioner was again exonerated stating inter alia that charge could not be proved against the Petitioner. In the meantime, the Petitioner was promoted to the Senior Grade of Mizoram Civil Service vide notification dated 29.4.1999. The disciplinary authority being not satisfied with the second enquiry report did not fully exonerate the Petitioner from the charges levelled against him rather imposed minor penalty of "censure" against the Petitioner vide order dated 3.6.1999. On the recommendation of the Mizoram Public Service Commission, one Rotluanga was promoted to the Senior Grade of MCS on officiating basis with retrospective effect from 29.4.1999 vide notification dated 30.7.1999, a colleague of the Petitioner. The Petitioner was confirmed to Junior Grade of Mizoram Civil Service w.e.f. 5.7.1994. The Petitioner being deprived of such regularization and non-inclusion of his name in the final seniority list dated 19.11.2001 of the Senior Grade of MCS, filed W.P.(C) No. 52 of 2002 before this Court. This Court disposed of the said writ petition vide judgment and Order dated 4.2.2004 observing as follows:

name was rightly not included in the seniority list published for the Senior Grade Mizoram Civil Service Officers. However, considering the entire circumstances there appears to be some mistake on the part of the Government in issuing the order of promotion in the nature it has been issued and it is for the Government to consider the case of the Petitioner for regular promotion. Considering all the factors I direct the Government to consider the case of the Petitioner for regular promotion in accordance with law within a period of three months from placing of this order before the appropriate authority and pass necessary orders in consequence thereof.

On the basis of the judgment and order dated 4.2.2004 a review DPC was held on 1.6.2004 and the Petitioner was promoted to Senior Grade of MCS with retrospective effect from 20th May, 2001. The Petitioner being aggrieved thereby submitted a representation with a prayer to promote him on and from 29.4.2009, the date of promotion of his juniors to the Respondent No. 2. The Petitioner's representation was, however, rejected vide letter dated 2.9.2004. The Petitioner thereafter submitted a fresh representation to the Respondent No. 2 and after careful consideration of the representation, the officiating promotion of the Petitioner to the Senior Grade of MCS was regularized w.e.f. 29.4.1999 and thus, seniority of the Petitioner was restored by the notification dated 23.3.2005. Twelve of his juniors being aggrieved by the Petitioner's promotion on and from 29.4.1999 filed W.P.(C) No. 45 of 2005 before this Court challenging the Petitioner's promotion contending inter alia that such promotion could not be

made effective in view of imposition of penalty of "censure" by the disciplinary authority. It was further contended that the Petitioner is illegally promoted. Being aggrieved with the judgment and Order dated 26.6.2007 passed in W.P.(C) No. 45 of 2005, the Petitioner preferred Writ Appeal No. 322 of 2007 which was later withdrawn by the Petitioner. In compliance to the judgment and Order dated 26.06.2006 passed in W.P.(C) No. 45 of 2005, the Respondent No. 2 herein by notification dated 23.1.2009, the Petitioner's retrospective regularization of officiating promotion to the Senior Grade of the MCS has been revoked. In the meantime, the Under Secretary to the Government of Mizoram, DP & AR (CSW) wrote a letter to the Mizoram Public Service Commission (for short MPSC) to examine the review petition submitted by the Petitioner and to offer advice/opinion on the question of revocation on the penalty of "censure". The MPSC offered its opinion that it would have no objection to accept the view of the Government in respect of revocation of penalty of "censure" which is imposed against the Petitioner. The matter was also placed before the Law and Judicial Department, Government of Mizoram and after discussion it was observed as under:

Regarding the case of Pu H. Lalengmawia, MCS, materials available in the file were examined and it was unanimously viewed that revocation of the penalty is supposed to be done with retrospective effect i.e. from the date of imposition of the penalty, if it is to be revoked.

Since the matter of revocation of the penalty of "censure" of the Petitioner was under consideration of the State Government, the Respondent No. 2 did not include his name in the final seniority list of the Junior Administrative Grade of MCS. Thereafter, Respondent No. 2 issued the following order:

Whereas Pu H. Lalengmawia, MCS was awarded a minor penalty of "Censure" vide order No. A.19014/1/91-P&AR(CSW) dt. 3.6.1999;

And Whereas the competent authority, after careful consideration of the circumstances of the case that led to imposition of a minor penalty of censure; decided to set aside the penalty.

And Whereas the MPSC vide their letter No. C.14012/3/96-MPSC dt. 19.3.2009 has agreed to the decision taken by the Revising authority for setting aside the penalty of censure;

And Whereas the matter was referred to the Id. Advocate General, through the Law & Judicial Department, for opinion who has advised the DP & AR to revoke the penalty of "Censure" imposed upon Pu H. Lalengmawia vide his opinion dt. 13.5.2010 and clarification dt. 22.6.2010 in the DP & AR's file.

Now, therefore, the Governor of Mizoram in exercise of the powers conferred by sub rule (1) of Rule 29 of the CCS (CCA) Rules, 1965 hereby revokes the minor penalty of "censure" imposed upon Pu H. Lalengmawia, MCS.

Subsequent to the setting aside and revocation of the penalty of "censure" by the

Government vide order dated 19.7.2010, the Petitioner addressed a letter to the Chief Secretary of Mizoram requesting him to take appropriate steps so that he could enjoy all service benefits including his seniority. The Respondent No. 2 thereafter issued the following order on 10.8.2010:

In continuance of this Department's order of even No. dt. 19.7.2010, it is hereby clarified that effective date of the said order shall be from the date of issuance of the Notification/Order i.e. 19.07.2010.

5. It is contended by the Petitioner that impugned order dated 10.8.2010 issued by the Respondent No. 2 is unreasonable and arbitrary in view of revocation of penalty of "censure" by the order dated 19.7.2010.

6. It is submitted by Mr. Michael Zothankhuma, learned Senior Counsel that the penalty of "censure" was imposed upon the Petitioner vide order dated 3.6.1999 by the disciplinary authority after meticulous scrutiny of the second enquiry report dated 4.12.1997. Though the enquiry officer for the second time exonerated the Petitioner holding that the charge brought against the Petitioner could not be proved, the disciplinary authority after going through the second enquiry report held that the alleged misappropriation has been the result of improper maintenance of accounts while the Petitioner was Block Development Officer, Zawlnuam and for that the Petitioner could not be fully exonerated from the charges and accordingly awarded a minor penalty of "censure" against the Petitioner. It is also submitted by Mr. Michael Zothankhuma, the learned senior counsel that the aforesaid penalty of "censure" imposed upon the Petitioner has been revoked by the Governor of Mizoram in exercise of power conferred under sub rule (1) of Rule 29 of CCS(CCA) Rules, 1965. Order dated 10.8.2010 fixing an effective date of revocation is illegal. Mr. Michael Zothankhuma, further submits that when the penalty imposed on a particular date to a particular person/officer such penalty when revoked by the appropriate authority, revocation of the penalty would be effective from the date of the order of the imposition of the penalty. Effectiveness of the revocation, therefore, cannot be segmented and given effect to from a particular date other than the date of punishment. Therefore, the effective date indicated in the order dated 10.8.2010 that revocation should take effect from 19.7.2010 would be erroneous and illegal. Mr. Michael Zothankhuma, learned senior counsel, therefore, submits that the impugned order dated 10.8.2010 cannot subsist in view of the order dated 19.7.2010. By order dated 19.7.2010, the penalty of "censure" had been annulled, made void, recalled and set aside. Therefore, the penalty of censure issued vide order dated 3.6.1999 being revoked by order dated 19.7.2010 is to take effect from the date of issue of the penalty of "censure". The order dated 10.8.2010 is according to Mr. Michael Zothankhuma is illegal and arbitrary.

7. Mr. Aldrin Lallawmzuala, the learned Addl. A.G., Mizoram representing State Respondents agrees to the submission advanced by Mr. Michael Zothankhuma, the learned senior advocate that revocation of the penalty of "censure" is to take effect from 3.6.1999 pursuant to the order dated 19.7.2010 and not from the

date of order i.e. 19.7.2010.

8. In view of the facts involved in this case and the submissions advanced by the learned Counsel for the parties, this Court finds that the order dated 10.8.2010 cannot stand in the way in view of the order dated 19.7.2010. The impugned order dated 10.8.2010, therefore, warrants interference. The impugned order dated 10.8.2010, is accordingly set aside and quashed.

9. Writ petition accordingly stands allowed and disposed of. No cost.